

# THE INDIAN PROBLEM IN SOUTH AFRICA

BY

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WITH AN INTRODUCTION

BY

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## INTRODUCTION

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No excuse is needed for placing before the public this little volume, on, what is admitted on all sides to be, a very difficult problem, and, while I cannot see eye to eye with the author in all he says, I must, candidly, confess that most of the arguments he uses against the proposed Asiatic Bill are, to my mind, irrefutable

It should, I conceive, be the aim of all legislation, so far as possible to make for a contented people, for no country can ultimately prosper which attempts to repress an unenfranchised minority. The Bill in question is so palpably one sided—so un-British in its aims—and so patently aggressive to the Indian community as to make all fairminded people believe that those responsible for it are blind to the future welfare of South Africa. It must be remembered that the Indians were first introduced into Natal owing to the then very parlous state of the labour conditions, representations having been made to the Government of India, the latter agreed, in view of the very special inducements offered, to permit such immigration under contracts of indenture, one of the conditions of which was that such labourers should be returned to India after completion of their indentures. Subsequently, however, and with a view to retaining the Indian immigrants in the country, the Natal Government offered all who remained, plots of land as gifts. Many Indians took advantage of this offer and today we have thousands of their descendants (all born here) in our midst, a large proportion of whom are educated and own property in freehold, and yet, forsooth it is proposed, by a stroke of the pen, to place such restrictions upon their freedom as to treat them as helots! In such drastic methods madness lies, for no country can hope to succeed, nor can any Empire endure, unless based on justice for all.

As one born in Natal and having spent nearly all his life here, I fully realize the importance of what is termed the "Indian menace." It is one which needs very serious con-

sideration, and, above all, tactful treatment to deal with—the problem is far too big to be dealt with in such a “steam roller” method as is proposed. A very large majority of the Indians in this country were born here and know no more of India than the average European does—all their relations and friends, too, live here yet it is deemed politic to introduce, what is wrongly termed “repatriation, either directly or indirectly by a system of repression.” Such means of dealing with the matter are doomed to failure. It is a principle of International law that no person can be sent away from the land of his birth against his will, unless as a punishment for some crime committed by him. In dealing, therefore with this admittedly complex question, it behoves all legislators to bear in mind that, apart from the tint of their skins, Indians are imbued with the same aspirations for advancement—as are those of their rulers. Their colour alone should not therefore be deemed sufficient to treat them as aliens and, if their just rights be assailed, their properties forcibly taken away from them (even though compensation be made therefor), and their freedom restricted, while having the right to be called, and deemed to be, “British subjects”—trouble must certainly ensue, not only in our midst but with the Indian Empire. History teaches us that any subject race must be allowed full opportunity for advancement, and that, if such opportunity be deliberately and ruthlessly denied, discontent and finally, serious, trouble must result. The sooner, therefore, we as Britishers, realize that “what cannot be cured must be endured,” the better it will be for all parties concerned. The Indian is in our midst, *and will remain here* and it is our duty to keep that fact in view. It is idle to attempt to deal with the matter without consulting the people most vitally concerned. The better class Indian has as much antipathy to have as his neighbour a low caste countryman wrongly called a “coolie” as a European has, and if, instead of treating—or attempting to treat,—all Indians alike, merely because of their “colour,” our legislators would consult with them and seek their advice and aid, I am satisfied that good would ensue.

Another point that should be borne in mind is, that, when Natal first received her Charter, it was a special instruction to her first Commissioner ‘distinctly to declare that there shall not be, in the eye of the law, any distinction or disqualification

whatever, founded on mere distinction of colour, origin, language or creed, but that the protection of the law, in letter and in substance shall be extended to all alike" Moreover, when Her late Majesty Queen Victoria was proclaimed Empress of India, she made the distinct promise that all her Indian subjects would at all times be free to travel to, and to reside in, any portion of her Dominions in like manner as all her other subjects!

I would, therefore, commend all—Europeans as well as Indians—to remember that, before any satisfactory solution can be come to of this most difficult problem, it is, above all, things, necessary to approach the subject, determined to "give and take,"—a spirit of compromise is essential—and if, with such a spirit prevailing, it is also recognised that the Indian must live here, I cherish the hope that some *MODUS VIVENDI* will be evolved which, without sacrifice of principle on either side, may be the means of arriving at a satisfactory and peaceful settlement

HAROLD J STUART

11th November, 1925,  
Durban, Natal

# THE INDIAN PROBLEM IN SOUTH AFRICA

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## PART I

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### CHAPTER I

Being an Indian and one proud of the fact and having the right to call himself a British subject, the writer ventures to address this appeal on behalf of his countrymen to the citizens of the Empire for a sympathetic consideration of their case which has now assumed serious if not alarming, dimensions, owing to the introduction of the Asiatic Bill into Parliament by the Hertzog Government

In this, the first of a series of pamphlets, on the Indian question, the writer proposes to deal with the immediate effect of this Bill in the event of its becoming law. In our second and subsequent issues, the writer hopes to trace a historical survey of the Indian colonization in this continent with special reference to the development of Natal by the Indians and it will be the earnest endeavour to prove by facts and figures, extracted from Parliamentary records, how this country progressed step by step by the industry and thrift of the Indian population, and in effect, the writer hopes to prove the legitimate claims of the Indian community for a fair and unrestrained opportunity to live and thrive in this the land of their birth and domicile. As a compilation of the kind indicated above involves considerable study and labour, the writer hopes to publish it in due course of time, but in the meantime, the present pamphlet containing as it does, the salient features of the Asiatic Bill will enable the public intelligently to grasp the critical situation created by the introduction of this Bill and the danger staring in the face of the community for their very existence in this the land of their permanent home

The full text of the Asiatic Bill published by the Union Government is an illuminating document that will open the eyes of the Asiatic World as to the opinion formed by the Europeans of the character and national status of the Asiatic resident population in the Union. It will be a difficult task even for an astute lawyer to unravel the mysticism surrounding several sections of this Bill. Some are inclined to believe, including some influential European newspapers, that the present Bill is a stereotyped document of a similar measure introduced by Mr Patrick Duncan last year but a close scrutiny dispels all such notions. Of course it is only in certain isolated parts some of the provision of the former Bill are patched up here and there, and in certain other places, while rejecting the wholesome items, the most impracticable and undesirable recommendations of the Asiatic Commission have been incorporated in this Bill.

In effect, while the Bill of last year based as its main principle, segregation of the Asiatics, as a panacea for the so called Asiatic menace, which has been agitating this country during the last half century, in areas exclusively set apart for them for residential and trading purposes, without interfering with the rights of the Indian agricultural population, the present Bill bases the whole of its structure on the principle that the Indian race is an undesirable community and, as such, "aliens" who ought, if possible, to be either persuaded to leave the country by a process of self-repatriation or if necessary, by the pressure of law in a manner so as to force them to realise that they stand the risk of losing all their wealth, and in the pursuit of this practical "squeezing out" policy, segregation of the Indian community under Chapter 1 of this Bill has been put in as a means to an end, that is to say, segregation is being used as one of the instruments in this process of disintegration and elimination of the community to round up the domiciled Indians in a particular locality with the ultimate object of elimination or expulsion, while, in the Bill introduced by Dr Malan's predecessor, the ultimate object was segregation and segregation alone.

Such being the difference between the Statecraft of the South African Party and their opponents the Nationalist Labour combination, it is only just and fair to remark that the

Nationalists command greater resources in astute diplomacy having for its ultimate object race elimination than their brethren in the SOUTH AFRICAN PARTY camp. Should this species of statesmanship be worthy of any recognition at the hands of the civilised world of Europe and Asia, then the Nationalist Labour statesmen are more qualified for recognition and certainly they can add another feather to their cap for having brought in a Bill original in conception, immoral and deceptive in tendency but disastrous in consequences on the victims at whom it is aimed in inflicting considerable harm on a community who by all the known laws of God and man are entitled to lead a peaceful existence in this the land of their forefathers and themselves.

With this brief introduction which we think is necessary, because of the fact the very foundation and the very title for continuity of existence of our community has been shaken and challenged by this Bill, for our readers to closely follow our future comments, we venture to state the salient provisions of this Bill and our comments thereon which are as follows —

The first chapter deals with reservation of areas for the entire Asiatic population in the Union—a measure that has been condemned as unworthy of consideration by the Asiatic Commission and which the present Government has deemed fit to adopt and seek legislative sanction. The Asiatic Commission, in page 63 of its report observes as follows —

“Repatriation being out of the question and further immigration of Asiatics being prohibited, the serious and important problem must be faced how to deal with those who are domiciled in the country have the right to remain in it ”

“Their numbers are limited and cannot increase in any province of the Union to any material extent except by the normal excess of births over deaths, for by the Immigrants Regulation Act of 1913 immigration is barred not only from Overseas but also from one Province to another ”

“The Indian community have accepted the restrictions on inter provincial migration and do not ask for their removal. In the Transvaal the evidence and statistics which have been summarised in this report should go far to remove the misconception and allay the ill founded alarm prevailing among

sections of the community regarding the "Asiatic Menace" It seems inconceivable that, in the circumstances mentioned the few thousands of Asiatics in that Province and their descendants could even succeed in swamping the European population as having frequently and emphatically asserted We find ourselves wholly unable to support the policy of repression which has been advocated by some of the witnesses Indiscriminate segregation of Asiatics in locations and similar restrictive measures would result in eventually reducing them to helotry Such measures apart from their injustice and inhumanity degrade the Asiatic and react upon the European "

• "Commenting on segregation policy strenuously advocated by the Anti Asiatic party, the Commission in page 33, paragraph 120 states as follows —

' The difficult question remains, how to ameliorate the position arising from their (Indians) presence in the country Segregation of some kind was the panacea invariably recommended by witnesses The extreme section advocated the immediate and complete segregation of all Asiatics, both as to trading and residence, that is to say that bazaars or locations should be set apart within Municipal boundaries, but at some distance outside of the township proper, in which Asiatics are to carry on their trades as well as reside, and that they should on no account be allowed either to reside or carry on business in the township itself that those who at present, have business in any town should be compelled to remove them into the bazaar or location and that no new licences to trade should be issued to Asiatics in future

"The more moderate section recognised that it would be most unjust and unreasonable to force men who had been trading in the centre of the town for many years, and established business connections there, to remove to an outside location They suggested therefore that such traders should be allowed to continue to carry on business in their present premises until the death and insolvency of the licence holder but that, for purposes of residence, all Asiatics including those traders, should be compelled to remove into locations and that no new licences to trade except in such locations, should be issued to Asiatics

"These recommendations embody the views expressed by Mr



Philips, the Chairman of the South African's League, and were finally endorsed on behalf of the League by their Counsel at the close of the enquiry

121 "The result of our visits of inspection to some of the locations or so called bazaars at present set apart for Asiatics in the Transvaal was not such as to inspire confidence in a general policy of segregation. At Germiston, Asiatics are prohibited by the terms of the titles to stands from residing or trading in the township. But the Municipality has established an Asiatic bazaar about a mile outside the town in which there are a considerable number of Indian residents, principally hawkers and a few shop keepers. The business carried on is chiefly with the Natives employed at the neighbouring mines and those who reside at the adjoining Native location.

"This bazaar appeared to be in a very neglected and insanitary condition. The Indians residing in it complained that, as regards lighting, sanitary and other arrangements their wants receive little or no consideration from the Municipality.

"These complaints were confirmed by our inspection in which we were accompanied by the Town Clerk and Superintendent.

122 "At Boksburg, there are two Asiatic bazaars. The new one, though well arranged and laid out, has comparatively few occupants at present, owing to the difficulty experienced in inducing the inhabitants of the older bazaar to vacate their dwellings and move into the former, which is only a few yards off. The result is that the old location which is the more populous, is in the same neglected and insanitary condition as that at Germiston.

123 "But our worst experience by far was at Vrededorp a township close to Johannesburg and within its Municipal limits which was originally established by President Kruger for the benefit of indignant burghers of the Republic. There are two locations, one for Asiatics and the other for Natives. They adjoin one another, and are separated from the European portion of the township by a single street. But no effort seems to be made to keep the inhabitants of the two locations apart. We found as many Natives and Cape coloured people as Indians in the Asiatic location.

" The members of the Commission were guided through the location by the Municipal Officers of Health and made a close and thorough inspection of its conditions which are found to be appalling. It is difficult to conceive of a worse slum existing in any part of the world. We found the inhabitants crowded and huddled together in small hovels amidst indescribable filth, and leading a most insanitary mode of life. And this was the state of things existing within the Municipality of Johannesburg, the wealthiest and most populous town in South Africa, and within a more than a mile of its magnificent Town Hall.

' The majority of the inhabitants of this location appeared to be Asiatics of a low and degraded type though we met with a few of the superior class who strongly resented the miserable conditions under which they have to live.

' The outbreak of bubonic plague in 1904 had its origin in the Vrededorp Asiatic location but although many of its tenements were destroyed at that time and have since been re-erected, there seems to be no improvement, and according to the reports of the Medical Officer of Health, the place continues to be a serious danger to the public Health of Johannesburg. It is moreover said to be the favourite haunt of illicit liquor dealers and criminals of the worst character.

124 ' In the circumstances it is not surprising to find the Indian community pointing to these so called bazaars or locations as examples of what may be expected, if they are to be relegated to such places at the behest of the Municipalities in the Transvaal.

' There can be no question that the intermingling of the residence of Asiatics or other coloured people with those of Europeans is every undesirable and should if possible be avoided. It is repugnant to the feelings and instincts of even the poorer class of whites in this country and there appears to be no desire on the part of the Asiatic to reside amongst Europeans. They would prefer living amongst compatriots of their own class, if they were afforded the opportunity of establishing decent places of residence in some suitable locality. But those traders who have acquired some education and have raised themselves in the social scale, particularly object to be driven

into location, in which they would be mixed up with the lower classes of their own race

125 "It is sometimes not sufficiently recognised that there are social grades amongst the Asiatics as amongst Europeans, At Johannesburg Indian merchants appeared before the Commission who proved by their books and Income Tax receipts that their individual incomes amounted to thousands of pounds per annum. They conduct both wholesale and retail businesses on an extensive scale and live in commodious and well-appointed residences in various parts of the town

"From their annual household expenditure as shown by their books, which were carefully and accurately kept, their standard of living appears to be quite equal to that of the ordinary well-to-do classes amongst Europeans. It seems monstrous, therefore, to suggest that these men who have by their industry and commercial ability worked themselves up to such a position should now be forced to remove into locations

126 "We are all agreed that in the circumstances some system should be devised for establishing separate Asiatic areas for residential purposes. Residence in those areas must, however, not be compulsory, but should be achieved by gradually attracting the Indian community to localities suitable for the purpose. Any attempt to enforce compulsory segregation would result in failure and lead to a resurgence of the Passive Resistance movement

131 "The suggestion that holders of licences should be confined to trade in locations or segregated areas outside the townships is not reasonable and does not commend itself to us. As was said by the Chief Justice in Motan's case, IF THE COMMERCIAL DEALINGS OF THE INDIAN TRADER WERE TO BE RESTRICTED TO THE LOCATIONS IN WHICH HE LIVED SITUATED OUTSIDE THE TOWN PROPER, AND PEOPLED ONLY BY MEN OF HIS OWN RACE, THEN HE MIGHT FOR PRACTICAL PURPOSES AS WELL NOT TRADE AT ALL

"The result is however precisely what is arrived at by some of those who are responsible for the suggestion. Several witnesses who advocated compulsory segregation, both as to trade and residence, candidly stated that they supported it only as a means to an end, that end being to drive the Asiatics out of the country."

It would, indeed, be exceedingly difficult to find a greater authority than the Asiatic Commission to condemn the policy underlying this Bill, and so, we quoted at length the opinion of the Commission on the evidence of witnesses, who appeared before them advocating 'compulsory segregation' as the panacea for their alleged grievances

Seeing that the pernicious principle, which has been advocated by the Anti Asiatic Party and which has been denounced by the Commission as unworthy of consideration by any civilised Government, form the fundamental principle of the present Asiatic Bill, we venture to draw the serious attention of our unbiassed readers and ask for themselves as to what brought about such a radical change in the policy and out-look of the Government towards the Asiatic question?

Indeed there must be some extraordinary reason for the present Government for introducing such a drastic measure as this Bill, in defiance of the opinion and recommendations of a Parliamentary Commission presided over by such an eminent Jurist as the late Sir Johannes Lange! The reason or object underlying the present Bill is this—it is well known that the Asiatic problem which has been agitating this country is as old as one could imagine, and it has led to strifes—nay even a war—and now when Dr. Malan, the new Minister of the Interior says that "the Asiatic problem was a very pretty pressing one in the country" it is bound to arouse the curiosity, if not the consideration of all, provided any fresh developments had taken place in the expansion of the Indian activities in this country. But since the termination of the Boer War and ever since the absorption of the four self governing Colonies as an integral part of the Union, nothing of the kind has happened. On the contrary, the progress of the Indian community has been systematically retarded by a series of enactments having for its object the deprivation of the rights slowly but surely of domiciled Indians. Not a single instance could any responsible South African statesman point out to, wherein any attempt has been made either to improve the lot of, or extend rights to the Indian community since the inception of the Union.

Such being hard facts, it is but natural for disinterested persons to enquire as to how "the Asiatic problem, has assumed dimensions of a very pressing one in the country?" Of

course, Doctor Malan, the Minister in charge of this Bill has not vouchsafed anything but in his characteristic helter-skelter fashion says, that "the radical element in the country will certainly think that this Bill is too weak and moderate and, on the other hand, that element in the country which is faint hearted or weak will certainly think that this Bill is going too far, that it is too radical and that in certain senses it would be oppressive." But he qualified it by saying 'I must say that the Bill frankly starts from the general supposition that the Indian as a race in this country, is an alien element in the population, and that no solution of this question will be acceptable to the country, unless it results in a very considerable reduction of the Indian population in this country. But on the other hand, the method of dealing with this question will not be the employment of any forcible means. The method which this Bill proposes will be the applying of pressure to supplement, on the other hand, the inducement which is held out to Indians to leave the country. The Bill to a certain extent follows well known lines. To a certain extent, no go on the path which has been trodden before by my honourable friends opposite but the Bill does not rest there—it goes a good deal further.'

Dr Malan, it seems, seeks to find justification in the path trodden by Gen Smuts Government but he forgets that the policy and line of action of the previous Ministry are flagrant contravention of the spirit of the Union and of the undertakings and duties necessarily imposed on them as Ministers of the Crown and custodians of the rights and interests of an unrepresented race in this country, and therefore, it is needless for us to say that it is a solemn breach of faith. Now Dr Malan, by pursuing that policy and going a "good deal further than that—that is to say, by adopting what we would term this 'squeezing out policy'—a policy that was never thought of at the time when the four self governing Colonies came into Union, the Minister evidently undertakes legislation, that is foreign to all international laws and morality, not to speak of Christian charity that should govern the conduct of statesmen in the governance of a country. If the framers of the Act of Union had had any such intention, to treat the Asiatic races in the manner contemplated by the present or the past Ministry, and

if the British Government had had the remotest idea of any such notion lurking in the mind of the framers of the Union Act, the Imperial Ministers would not have given the necessary assurances evidently relying on the good faith of the white people of this country and the guarantee to the Indian community when they protested against the Union. Moreover, as Dr Malan appealed to the honourable members in the Opposition benches to observe a non-partisan spirit in solving the Indian and Native questions, it is to be hoped that he and his colleagues would adhere to his own dictum and conscientiously carry out their duties as Ministers of the Crown and non-partisan parliamentarians.

Perhaps Dr Malan, may or may not be aware that prior to the merging of Natal in the Union, the status of Indians in that Province was a subject of protracted controversy between Natal and England and since the two Governments could not come to a common understanding as to the status to be assigned to the resident Indian population, the Government of India notified Natal that they would adopt retaliatory measures "in view of the fact that the divergence between the standpoint of the colonists and that of the Indians has caused unsatisfactory position and that Indians have no guarantee that after expiration of their indenture they will be accepted by Union as permanent citizens. The Colonial Secretary, Mr Harcourt after notifying the foregoing intimation concluded his despatch with the following significant sentence — ' His Majesty's Government while regretting any inconvenience which may be caused to South African interests, feel that they must accept as adequate the reasons advanced by the Government of India for the exercise of the statutory power vested in them by recent legislation ' "

It is therefore evident that having no faith in the ordinary channels of communication between Colonial statesmen and the Government of India, the latter Government demanded a guarantee from the former Government and apparently as that was not forthcoming, the then Viceroy Lord Minto established the principle of retaliation against a component part of the Empire for not keeping faith, regardless of all moral if not technically legal obligations, in their treatment of the Indian settlers in Natal. Notwithstanding the precedent established

by the adoption of retaliatory measures, things did not improve and the Indian community being alarmed and fearing the worse fate, submitted the following grand remonstrance to the Imperial Government prior to the absorption of Natal in the Union. It graphically describes the nervous feeling dominating the mind of Indians by the advent of the closer union of the four self governing Colonies. The following are extracts from the petition sent to the Imperial Government —

1 Your petitioners are British Indians resident in Natal either by virtue of Immigration to, or birth in this Colony

2 At a time when the closer Union of the South African Colonies is on the point of being achieved, your petitioners humbly venture to approach you with a view to placing before you a review of the many grievances under which they as a community labour and to endeavour to secure redress before their affairs are handed over to be dealt with by a Federal Parliament composed generally of men hostile to the race from which your petitioners are derived

3 Since the grant of responsible government to this Colony, a lengthy programme of race and class legislation aimed at British Indians has been devised, and the grievances under which your petitioners labour have now become so numerous and so burdensome as to render the existence of any self respecting British Indian in this portion of His Majesty's Dominions almost intolerable. Having failed hitherto in securing redress therefor by all other methods of constitutional procedure as a last resort they now appeal to His Majesty's Government

4 The major portion of the Indian community of this Colony were either introduced or descendants of those introduced into Natal, under contract of labour from India at a time when the Colony was verging upon ruin for lack of an efficient labour supply

5 When the contracts of service were entered into between the Natal authorities and the Indian Government, the former bound themselves to respect the rights of the immigrant labourers to safeguard the interests to mete out just treatment during indenture, to educate their children, and after the expiry of the indentures, inducement was given in the shape of free lands to the labourers and their descendants to settle down

in this Colony and augment the numbers of the class of colonists necessary, for the development and exploitation of the mineral and agricultural resources of the Colony. The European colonists, in view of the immense benefit accruing to the Colony, offered them sufficient inducement to remain in the Colony for another period of five years in consideration of which they were given a free passage to India, but anyone failing to avail himself of this free passage system on the prescribed date forfeited his claim to its benefit. It is manifest, therefore that this Colony was eager to encourage Indian settlement. In this connection your petitioners beg to be allowed to remind you of two of the three conditions which were laid down in 1843 by Her Late Majesty's Government when Natal became an integral part of the British Empire.

The proclamation reads as follows —

“That slavery in any shape or under any modification is absolutely unlawful as in every other part of Her Majesty's Dominions

“That there shall not be in the eye of the law any distinction of colour, origin, language or creed, but that the protection of law in letter and in substance shall be extended impartially to all alike.”

6 ‘In regard to the trading section of the Indian community your petitioners respectfully submit that at a time when this Colony was fast declining in prosperity, the Indian traders like the Immigrant labourers worked for the expansion of commerce in the Colony. It is they who have been pioneers in introducing and extending trade amongst the aboriginal Natives of Natal and the existence in the Colony of the Indian, as a trader has proved of incalculable benefit to the whole Colony.

“The Indian trader by thrifty, honest and industrious habits, has proved himself a useful agent in meeting the humble wants of those brought into the country. A large number of European traders of whom a considerable proportion were aliens who frequently moved by trade rivalry, urged that the British Indian traders shall be deprived of their ordinary civil rights, the tendency of the Government, in order to satisfy the demands of the electorates has been to yield to these demands and the  
able result has been that your petitioners commercial



rights have been threatened at every point and many of your petitioners have been ruined

7 "Placing implicit confidence in the sense of British fairplay and justice, that your petitioners have always been taught to rely upon, they have been ready to share both in peace and war, where they have built up their homes and brought up their families in which they have invested their capital and have established themselves in various pursuits agricultural commercial, industrial, and otherwise

8 "Natal is the mother-country of a large number of Indians whose parents in some cases were born in this Colony In view of the fact that in the draft constitution, the Indians have been totally excluded from exercising those rights to which they as natural born subjects of His Majesty are justly entitled and in view of the many grievances under which they have laboured in the past in this Colony and as there is no prospect of a brighter future for them under the Union Government, your petitioners have to emphatically protest against the ratification of the aforesaid Act until their grievances have been redressed by making such amendments in the aforesaid draft Act of South Africa as would give to every British Indian citizen in Natal equal civil rights with other British subjects in South Africa in the eye of the law "

Having in mind the unhappy incidents connected with the controversy between the colonists and India, when Natal Indians made earnest representations to India and England, protesting against Natal joining the Union of South Africa, the British statesmen, after mature and serious consideration, with a view to taking every precautionary measure to safeguard the rights of the Indians, soothed the apprehensions of the Indians in the subjoined letter to the protestants —

Sir,

" With reference to the petition signed by Indians in Natal regarding their position under closer union forwarded to His Excellency under cover of your letter of the 14th July last, I have the honour to inform you that the petition was duly transmitted to the Right Honourable, the Secretary of State for the Colonies who, in despatch dated the 24th December last, desires that the petitioners' attention should be drawn to the amend

ment of section 147 of the Act of Union, having the control and administration of matters especially or differentially affecting Asiatics with the Province of the Governor-General-in-Council. This provision, while not repealing certain legislation as desired by the petitioners, will as His Majesty's Government, trust ensure consideration of questions affecting Indians in a broad and generous spirit.

"In regard to the second part of the petition, I am to inform you that His Majesty's Government have not felt themselves able to advise the appointment of a Royal Commission more especially as by recent amendment of the Dealers' Licences Act an appeal is now allowed to the Supreme Court in all cases of the refusal of a licence to existing holders."

I have the honour to be, Sir,

(Signed) G T PLOWMAN, Secretary,  
Prime Minister

Hon Secretary,  
Natal Indian Congress,  
31 Leopold Street,  
Durban

been exercisable by any such Governor or Governor and Executive Council and no lands set aside for the occupation of natives which cannot at the establishment of the Union be alienated except by an Act of the Colonial Legislature shall be alienated or in any way diverted from the purposes for which they are set apart except under the authority of an Act of Parliament.

148. "All rights and obligations under any conventions or agreements which are binding on any of the Colonies shall devolve on the Union at its establishment."

The aforesaid Sections in the Act of Union coupled with the assurances, referred to above given by the Imperial Government unless they have become meaningless now by effluxion of time or other causes, ought to enable Dr Malan and his colleagues to consider well before they trod on the path chalked out and trodden by General Smuts in reference to the Indian question in the Union. However, the fact is, two wrongs do not make one right, and in this case, the mere fact of General Smuts pursuing a line of action necessitated by the exigencies of party politics is no excuse for the present Government to "go a good deal further." It seems that this Bill which is operative throughout the whole of the Union has been introduced flouting the deliberate opinion of the Asiatic Commission, if not with a vengeance, at any rate, with the sole object of driving the Indians out "lock, stock and barrel."

According to the provisions of Chapter I. Indians would be suffered to live and trade only in areas set apart for them, while the Indians in Natal, who form the bulk of the Agricultural population, would be rounded up within a radius of thirty miles from the Coast belt. There will be two kinds of segregation, one within a radius of thirty miles, and the other, within Township and Municipalities within the boundary of the thirty miles limit. In the event of the Bill going through, the whole of the Rural Indian population outside the thirty miles limit who follow agricultural pursuits, would be ruined, and driven to an already congested area, and by sheer cut-throat competition and in a keen struggle for existence common ruin would be facing all.

Disagreeing with the recommendations of the majority members of the Asiatic Commission on the project of voluntary segregation by laying aside certain areas for the Agricultural class of Indians, Mr W Duncan Baxter, one of the members of the Asiatic Enquiry Commission, in his minute of dissent recorded his recommendation as follows —

“ I dissent from the recommendation contained in paragraph 199 of this Report, viz that the right of Asiatics to acquire land in Natal for farming and agricultural purposes should be restricted to the Coast belt. It seems to me a retrograde proposal, inconsistent with other recommendations in the Report, which are founded on the idea of voluntary separation and not compulsory. It is also a restriction of existing rights of ownership and in case of ex-indentured Indians and their descendants a breach of the conditions of recruitment, which I think should be scrupulously adhered to in the interests of good feeling and the sense of fairplay, so necessary in our relations with the Indians in South Africa and the Government of India ”

Although, certain provisions of this Bill, profess to protect vested interests, yet on a closer examination, it will be discovered that it is all illusory. It is impossible for any Legislature in the world to launch on a measure, having for its object elimination of a community and at the same time profess to afford protection of vested rights of that community for obvious reasons. Indeed, no Legislature could prevent the operation of the laws of political economy which work automatically, despite what the Legislatures may say or mean to say. Therefore, it must be obvious that by one stroke of the pen, the Legislature would be creating an artificial economic atmosphere, and hence those of the Indians both traders and farmers, who have properties outside the radius of thirty-miles, would considerably suffer by depreciation in the value of their properties owing to competitive restrictions imposed on racial grounds, and thus they would be ruined financially. Similar results would follow in the case of Europeans who depend on Indian business connections. The same argument would be applicable to those of the Indians who possess properties outside the area to be allocated within the jurisdiction of Municipalities and Townships. Therefore, it will be transparent that the main object of the whole this legislation is, to compass the ruin of both the Indian

trader and the farmer, first by assuming that the whole of the Indian race is aliens, next segregate them under the pretext of insantiation and unfair competition, thirdly creating by statute such an artificial economic conditions as to precipitate an unnatural depreciation in the value of their real estates, and thus compass their ruin and inevitably bring pressure on them by economic and legal machioery to leave this country. Such is the plan now being hatched under this Bill, and therefore it should not be surprising to note the Indian population, at any rate, of Natal and the Transvaal being alarmed at the prospects awaiting them in this country.

However, it should be remembered that in the present inter-dependant state of economic life of all sections of the community, the Europeans alone cannot escape with impunity the common disaster awaiting the Indians by the passage of this Bill. As nature would have it, in accordance with the just laws of retribution, perhaps, the Europeans would suffer by the impending ruin of the Indians as much, if not more, than the victim of this irrational abuse of the Legislature. The more laws you pass, for entrenching all sources of wealth to the white race, the less is the beneficial result therefrom. The greater is the vigilance displayed, for keeping all trades and occupations as a special preserve for the whites, the larger becomes the dimensions of the unemployed and the intenser is the distress among them. This is an inefphable phenomena, which we notice almost every day, notwithstanding the coresses of our Ministers and it seems to have escaped the notice of the present Government. In our next issue, we hope to prove, by irrefutable facts and arguments, provided the necessary statistics are available, that the present tendency of the Union Government and the white people of this country, is going to land the bulk of the people in an unretrievable disaster, and the ultimate sufferers are going to be, both European and non-European alike.

It is of no consequence when the Legislature passes experimental measures in matters of perhaps, local or even communal nature of minor import, but the present Bill does not come under that category. This is a Bill of transcendental importance to all, affecting each section in one way or the other. This Bill is not only a gross negation of justice and equity, which is the common property of all mankind, and for the protection

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of which, all the great Powers framed a Code of International Laws and ethics, but also the various provisions are calculated to set at defiance the elementary laws governing the conduct of man in civilised society. If the people of the Union have any pretensions for organised civilised society, and if they care to attach any importance to public morality and public opinion abroad, then their leaders and statesmen must conform to the unwritten laws of public morality and the science of Economics on which rests civilised society and modern day civilisation. Hence, it necessarily follows that no Legislature can set at naught the operation of the Economic Laws, and if you attempt it, you do so at the risk of your existence, and your civilisation collapses along with your diminishing wealth resultant from a disturbance in your economic structure. The Bill under consideration strikes at the very root of the economic existence of a community who have been part and parcel of the South African nation for well-nigh three quarters of a century, in however imperfect a manner it may be, and whose economic, if not political rights and interests, are interwoven with those of the European, either directly or indirectly, and when once you attack the one, in however feeble or effective a fashion it may be, it is bound to react on the other proportionately. Therefore, it must be self-evident to all keen observers that the Bill is not likely to find the country as happy and progressive, as the Pact Ministers fondly hope to see, by the passing of such repressive laws against the Asiatics.

Dr Malan invited public criticism, we have stated above what we consider the Indian standpoint, and however ardently we may wish to find a redeeming feature in the first Chapter of the Bill, we must confess, we have not been able to find a single item, except the one that confers on the Transvaal Indians the right to possess a piece of land in locations set apart for them in the Transvaal. But we consider that, that is not a concession at all, since England proclaimed to the world on the eve of the outbreak of the Anglo Boer War, that in order to redress the grievances of the Indians, that war was declared. Hence, the so called concession made to the Transvaal Indians, under this Bill, is no concession at all, and therefore, so far as the first Chapter is concerned, the provisions of this Bill would reduce a hardworking and prosperous community to utter ruin.



Dr. Malan, in his Ministerial pronouncement declared that —

"No solution of this question (Indian) will be acceptable to this country, unless it results in a very considerable reduction of the Indian population;" and in order to give effect to this policy, the Minister says, "the provisions of Chapters I and II. will be applied as a pressure to supplement the inducement (monetary) which is held out to Indians to leave this country." This is, indeed, a brutally frank statement of the Government's mind, but the method he proposes to adopt, to state plainly, is unworthy of any civilised Christian Government. In effect, the Minister says to the Indian, "if you don't go back to your home gracefully, I will shoulder you out without your bag and baggage, but if you go like an obedient boy, sell up your goods and chattel and on top of it, I will give you £10 and quietly go. Otherwise I will make your life intolerable here but if you choose to remain here, do so as a pauper." This is the sum and substance of the Ministerial mind. We daresay, such a species of statesmanship is not a happy augury for this Young South African Nation to achieve their just ambitions and to become a recognised factor in the comity of ruling civilised nations! Be that as it may, we hope the Ministers will carefully consider the contentions and the standpoint of the Indian community.

1 It has been urged that the presence of the Indian is a menace, because General Smuts expressed the opinion at the Imperial Conference that the whole question of the continuance of Western civilization in South Africa was involved.

2 It has been urged that owing to the low standard of living of the Indian, the European could not compete in trade and industries, and therefore could not exist."

These are the two main reasons which are alleged to prompt the European to consider the presence of the Indian a menace to the white civilization and the predominance of the European race in this sub-continent.

Let us consider the first point, that is the menace of the Indian to the Western civilization. As no authentic definition has been given so far, and as there seems to be considerable confusion of thought as to the meaning of "civilisation" no matter whether

western or eastern, we take this opportunity to state the true purport of it in the words of the late Lord Russel, one of the eminent Jurists as well as the Lord Chief Justice of England. Addressing the American Bar Association, Lord Russel said —

“What, indeed, is true civilization? By its fruit, you shall know it. It is not dominion, wealth, material luxury, nor not even a great literature and education widespread, good though these things be. Civilization, is not veneer. It must penetrate to the very heart and core of societies of men. Its true signs are, thought for the poor and suffering, chivalrous regard and respect for woman, the frank recognition of human brother-hood irrespective of race or colour or nation or religion, the narrowing of the domain of mere force as a governing factor in the world, the love of ordered freedom, abhorrence of what is mean and cruel and vile, ceaseless devotion to the claims of justice’

If Lord Russel's definition of the term “Civilization” is correct, and we venture to think that that has been the guiding principle more or less of civilised nations, we make bold to assert, how could the Indian be a menace to the white civilization, since we claim, our civilization also is founded on common ethical principles! It is therefore manifest that if the Eastern civilization had not been founded on principles akin to that of the European, the Indians would have been barbarians whose moral instincts are known to be obviously the lowest! It must be evident from past experience extending over a half century of existence of the Indian in this continent, the Indian has not proved himself a menace when there was a smaller white population than we have now and, therefore, one could well imagine whether it is possible henceforth for the Indian to prove himself a menace to the Western Civilization!

In regard to the standard of living, we venture to say that a person's standard of living, no matter whether he be European or Indian, depends on his earning capacity, as well as on his actual income and therefore, it must be transparent, that income becomes the deciding factor in adjusting ones standard of food, raiment, abode and even comfort. As the present economic structure of society is not founded on an equal basis, it is impos-

le—nay—it is not within the province of any legislature, to

standardise the economic habits, customs and manners of the individual. However, in order to convince the world of the unfounded allegations made against the Indian community in the matter of the standard of living of the Indians, the Indian community requested the Ministers to publish the minutes of evidence tendered before the Asiatic Commission in respect of this aspect of the question, but the Ministers declined to publish same for reasons best known to themselves. We venture to state that should the Government have strong grounds for substantiating their case against us on economic grounds, then why should they decline to publish the minutes of evidence tendered before their own Parliamentary Commission? It should be self-evident to all keen observers that the present trading conditions as well as the standard of living is the inevitable product of the present economic system, which is at best not an ideal one, and no legislature in the world could bring about a reform or destruction of that system by one stroke of the pen in the shape of an enactment of Parliament, and therefore, it necessarily follows that it is not the fault of the Indian if, he, by sheer force of economic circumstances was compelled to adopt a standard of living befitting his economic resources which being very narrow and limited naturally precludes him from rising higher in his standard of living.

It appears to us a monstrous thing, indeed, after forging all the weapons to keep the disfranchised races down for ever, to brand them with the badge of inferiority and penalise them for not rising up to the standard of the white man and stigmatise them for being as they are! In effect, what the Indian or for the matter of that, the non-European says is "Give us a fair chance as the white man has, and then judge whether we adopt the white standard or not."

In regard to competition in trade and industries, we venture to say, that "COMPETITION" being the life breath of the present economic system, it is impossible to avoid rivalry, on which the whole progress of society now depends, unless the State is prepared to attack the whole economic structure from its foundation and establish a new order of society, based on State Socialism!

Regarding the alleged menace of the Indian to the Western

civilisation in this country, we make bold to say that it is untrue and that the term is used in a loose manner to achieve certain political ends. The theory that a handful of Indians scattered over this vast Continent could sap the foundations of a mighty civilisation that is militant in spirit and highly organised in all aspects must be palpably untrue. We could prove this by concrete illustrations. A small community of Europeans, inheritors of Western civilisation, has been holding its own in India for a century and half, and we have not heard any one suggesting that the Western civilisation has been submerged by the Indian races nor Englishmen becoming denationalised by contact with Indians. Again, a handful of white merchants still live and do business with other Asiatic nations such as Japan, China, and the Far East and we have not heard of either of the inheritors of these two civilisations being worsted in the struggle for existence. While no such danger has overtaken the Western races in the very citadel of Eastern civilisation, one is seriously inclined to question whether it is ever likely in this vast Continent of South Africa, that the existence of the Indian community consisting as it does, of less than 150,000 souls might prove a danger to the Western civilisation? But if it does, as alleged, then all we can say is that from the apprehensions of the Anti Indian politicians, it becomes self-evident that there is something radically wrong with the Western civilisation, and it is inherently defective in its foundations and that it is not sufficiently virile to survive without transgressing the cardinal principles governing the existence of man in civilised society, on the existence of which the Western civilisation is supposed to subsist.

However, since the dawn of history, many a kind of civilisation has appeared, flourished for a time, and if it has disappeared, it is not because by coming into contact with peoples of differing characteristics but by inherent fatal defects, and by some indefinable causes that led to the decay of that particular civilisation. Therefore, it must be obvious, that the Indian community is not in anyway retarding the development of this country along the lines of Western civilisation and as a proof of our assertion we might say that the rising generation of Indians are practically assimilating European ideals and European culture. It has been stated repeatedly by responsible politicians, that

drastic measures have had to be adopted for the preservation of the white race. One can quite understand the meaning of the word "self-preservation" when applied in a broad sense, that is to say, when a nation attempts to draw conclusion, with another nation of equal standing in the struggle for their national existence, but when the ruling race in this country applies that term in a narrower sense in relation to their own fellow subjects who are not of European origin, then the proposition becomes an absurdity and especially the attempt of the Government on that score to crib, cabin, confine and in fact to strangle a community who are weak and voiceless seems to us a synonym for race or mob tyranny and oppression. If the meaning popularly attached to the term self-preservation in its narrower sense is accepted by Parliament as an established policy of the State, then a state of affairs logically follows and in fact might arise which would render the existence of civilised society a negation and thus civilised man would be reduced to the level of the untutored barbarian, each subsidiary part of a nation trying to help themselves by sheer force of majority actuated by the natural instincts of self-preservation!

Therefore, in view of the reasons set forth above, it is manifest that it is neither the economic causes nor the alleged menace of the Indian against European or Western civilisation that is at the bottom of the present agitation but it is due solely and exclusively to race antagonism against the Indian, because he is Indian, having no Power behind him to vindicate his rights and safeguard his national honour either at home or abroad. However, the Indians maintain that the Union of South Africa being an integral part of the British Empire which has an unwritten constitution, political traditions and a code of ethics common to all British subjects irrespective of colour or creed, and they being natural born British subjects, no parliament howsoever mighty it might be, has any right to transgress the unwritten laws of the Empire and pass a law, on the assumption that the whole of the Indian race as aliens, seek powers under cover of legal process to carry on, in effect, a systematic campaign of confiscation of their wealth and elimination of their bodies and soul. Even assuming for the sake of argument, that the recent development in Dominion affairs has conferred on the

Union, the status and powers appertaining to a full fledged Sovereign State, the Indian community in Natal maintains that, by virtue of their past historic connection with this Province and by virtue of the guarantee afforded them under Section 147 and 148 of the Act of Union, coupled with the assurances and guarantees given from time to time by the Imperial and Indian governments, it is not within the Province of the Union Legislature to devise legal machinery with a view ostensibly to segregate but in reality to oppress and expel British Indian subjects.

No unprejudiced person could place any other interpretation than that we have endeavoured to place on the provisions referred to in certain Sections of Chapter I.

In this connection we venture to quote the words of that eminent Historian, Sir John Seeley who writes on the effect of oppression — "Whenever we think of insulting our fellow-men by treating them with permanent contempt as unfit for our daily contact, whenever we regard them as only bearable at a distance in remote locations, nature sets to work silently and slowly in order to carry out her rectifying processes. She increases the fertility of the depressed race, she makes sterile the contemptuous oppressor. She demoralises with luxury the prosperous and the proud. She goads to greater industry the outcaste and the despised."

"Nature is always silently teaching and working" says Dean Inge, a recognised authority on Sociology, in a lecture delivered on the "FUTURE OF THE BRITISH RACE."

"Dumb nature cares nothing for the babble of politicians and trade union regulations. I know no instance in history in which a ruling race had not been ultimately ousted or absorbed by its subjects" when the Rulers act contrary to Divine Laws.

The provisions of this Bill, as will be noted hereafter, are comprehensive enough to embrace all the activities of the Indian community, and several sections and sub sections give ample power to the Executive to deal with the trading, agricultural, artisan and working class Indians in a manner as if they are dumb cattle fit for being rounded up into the kraal and those of the Indians who would not come under any class.

fied trade or calling are hable to be dealt with under the Immigrants Regulation Act as amended under Chapter II

Before proceeding with our comments on Chapter II, it is necessary for the public to know the effect of Chapter I on the vested rights of the Indians which is said to be protected. In order to prove that it is not so, we have quoted concrete instances of gross miscarriage, if not, perversion of justice, under rules provided for, at present, as things are and our readers may imagine what would be the fate of the Indian in the future, when the present Bill becomes law.

Section 5 (1) of Chapter I provides as follows —

“From and after the date mentioned in any proclamation issued under this chapter establishing a class trading area or a class residential and trading area within any Urban area, it shall not be lawful for any Licensing Court, Board or Authority or for any person authorised to grant or issue licenses or permits to carry on any trade or business within

- (a) To grant or issue to any person other than a person of the class concerned any license permit or other authority to carry on any trade or business within the class trading area or class residential and trading area as the case may be, or
- (b) To grant or issue to any person of the class concerned any license, or permit to carry on any trade or business within the Urban area elsewhere than in the class trading area or class residential and trading area as the case may be.”

Although we have been assured that the vested rights of the existing licence holders would be protected yet, it would be obvious that the aforesaid section provides ample power to the Licensing authorities within the Urban areas to grant in future licences only in the areas set apart for Indians. In order to enable our readers to imagine how it will operate, despite the assurance of the Ministers for the protection of vested rights, one must know the existing rules governing the issue of Trading licences.

No 194 General rules governing Rural licences in the Province of Natal provide thus —

13 (a) "The objections (for Rural Licences whether renewal or transfer) shall under each head of objection briefly state the nature and grounds thereof

The clerk shall as early as possible forward one copy of the objections to the applicant

1 A Petition in favour of or opposing an application shall be lodged with the clerk not less than four clear days before the date fixed for the hearing

11 (a) An objector and in every case where objections have been lodged, the applicant shall not less than five clear days before the date fixed for the hearing lodge with the clerk duplicate Schedules enumerating the documents which he intends to use other than petitions and applicants' books of account and the like or plans or papers that have been previously lodged

15 (a) The Licensing Board may obtain or receive from a police or Health Officer, Sanitary Inspector or other public authority, a report upon the building and the premises for which a licence is sought, their construction, condition, state of repair, sanitary arrangements, sanitary condition or any matter affecting the suitability for business or upon the manner and conditions under which the applicant has previously carried on his business "

While Natal is equipped with full powers to deprive even existing traders of their right to earn a livelihood, and we will prove hereafter that, that is the way the present Rule is being enforced in the case of Indians not long ago, the Transvaal Provincial Council, passed an Ordinance entitled "THE GENERAL DEALERS (CONTROL) ORDINANCE" the principle clause of it is as follows —

"Any application for the renewal of a licence issued between 1st July 1925 and the date of the coming into operation of this Ordinance, shall be regarded and dealt with as an application for a new licence "

The effect of this Ordinance in the Transvaal, would be that as no more new licences are issued to Indians, even an application for a renewal of the existing licences has been regarded as new, that means, the administration in actuality proclaims



repudiation of the vested rights of the Indians in the Transvaal.

While the Transvaal administration, in a curt and high handed manner, disown liability to vested rights, the Natal administration, adopts a more scientific but subtle method to give effect to the same objects as the Transvaalians, but with this difference, the latter is more blunt in their pronouncements, while the former uses various dubious stratagems to reach the same goal. We quote below, reports of cases recently came for decision before the Licensing Boards, as the final Court of Appeal in such cases and it would give a fair idea as to how the law is being operated with special reference to Indians.

In Natal, since the beginning of or about the current year, the Licensing Officer for the Borough of Durban, has been granting Trading Licences subject to the following conditions—conditions which are diametrically opposed to the spirit of law passed in 1910 in the matter of the right of Indians to transfer the existing licences. The following are the conditions imposed before granting a trading licence and which is endorsed by the Licensing Officer of Durban on that document—

“No transfer whatever of the licence will be applied for or granted.

The licence will elapse on the death of the applicant, or on his ceasing to trade.”

In accordance with the terms of the foregoing stipulations, a Colonial-born Indian, Singh, on the death of his father, claimed the right of transfer of his father's store, but though the licence was granted, it was done subject to the same condition notwithstanding the fact that the claimant was the legitimate heir to his father's estate. Even without the sanction of any law, the present Licensing Acts are administered in such a drastic manner, the ultimate object being elimination of the Indian population.

“Under the heading “Municipal Licensing Appeal Board, Important Indian Appeal Considered” the “NATAL WITNESS” in its issue of July, 1925, published the following Report—

A case of unusual importance came before the Board and created such lively interest that all the public seating accommodation in the Council Chamber was occupied, mostly

by European traders. The case was that of the Indian firm known as M M Amod (No 2) which has carried on a large, and, it is generally understood, flourishing business of general merchants in Ladysmith for a large number of years. The application for the transfer of their licence from portion of Erf 4, Block K, to the new premises on portion of Erf 3, Block K, situated in Murchison Street was refused by the Licensing Officer.

The Board consisted of the Mayor (Mr D Shearer, J P O B E) chairman, together with Councillors Right Rev W Turnbull, M A Fairclough, Andrews Brockbank, Jones, M C and Christopher. Mr E R Rawlinson, represented the appellant, Mr H C Johnson the objectors—the Ladysmith Chamber of Commerce, and Mr Doull watched the case on behalf of the creditors of the firm.

The history of the case is of particular interest and worthy of detailed explanation. The firm was registered in 1906 under the firm name of M M Amod (No 2), and comprised as, partners, Moola Mahomed Amod, Amod Cassim Moole, Essop A Moola and Mohamed E Moola, and carried on business in premises on portion of Erf 4, Block K until the month of April last, when the buildings were completely destroyed by fire. These premises had already been condemned by the Sanitary Inspector, and when notice to that effect was given they were given to understand that they would be permitted to trade in new premises next door on Erf 3, Block K while the condemned premises were demolished and fresh building erected, thereafter to retransfer to Erf 4 Block K. The destruction of the old premises by fire precipitated matters, and immediate steps were taken to carry on the business in the premises next door. But a large amount of stock not covered by insurance having been destroyed and the firm being unable to collect book debts amounting to a considerable sum, the firm was so crippled that it finds itself unable to implement its undertaking to rebuild at present, and therefore appealed against the decision of the licensing officer for refusing sanction to have definite transfer to the premises at Erf 3, Block K. The position thus created has created such concern amongst the firm's creditors, that credit has been stopped, and if the transfer of the licence is not granted it is allged the firm will require to give up business. The

position is further complicated by the existence of the firm M M Amod (No 1), comprising three of the partners in No 2 firm

At the outset the chairman asked if either side had any objection to Councillor Andrews sitting on the Board, and no objection being raised, Mr. Rawlinson was invited to address the Board. He said the application before the licensing Officer was for a transfer of licence of retail dealer, M M Amod who had traded for a number of years on Erf 4, Block K, to Erf 3, Block K, which is the next property up the street. The application was objected to by the Chamber of Commerce and lengthy objections were put in, but two of them were withdrawn leaving only one, that concerning the registration of firm, to be considered. It would be observed that the Licensing Officer had not upheld the objectors in their contention, therefore the objections were not before the meeting, in as much that they do not form part of the Licensing Officer's decision. Hence the reasons he (Mr Rawlinson) had to deal with were, first, 'It is not desirable to extend the scope of the firm'. The Licensing Officer had not stated his reason for coming to such a decision. He simply says "in my opinion etc," but his reasons for coming to that decision is wanted. He (Mr Rawlinson) questioned why it was not necessary to extend the scope. Was it because the appellants were Asiatics? He understood from his learned friend (Mr Johnson) that such was not the case.

The second reason given was "that no hardship would be imposed because permission had already been given to trade temporarily in the new premises until the destroyed building was re-erected". If the appeal was refused there would be a distinct hardship, because at the present time the firm was trading in premises next to those licensed, but that permission would only last until the end of the present year, and they were unable to apply for renewal at the end of the year. The position in regard to credit was very serious. The firm had £11,000 worth of stock at the time of the fire, no portion of which was insured. The stock that was insured was only in respect to firm No 1, occupied a portion of the premises. No 2 firm was not insured, and they have a dead loss in addition to book debts. The new premises belong to the appellants, the old premises that were burnt were insured for £500, which is far short of the

amount required to erect a decent building. The insurance policy was however held by the National Bank as security for an overdraft of £800, therefore the amount in question is not available. No 1 firm also suffered a loss of £10,000 in stock which was covered by insurance, but on technical grounds the insurance companies repudiated liability and have not paid out anything. The appellants have therefore a dead loss of £11,000 in stock plus book debts. No 1 firm a loss of £10,000 in addition to book debts amounting to £7,000 owing to the fact that the insurers cannot prove their claims because of the destruction of the books. A total loss of £29,000 is a very serious matter to a firm like this. He therefore asked that in dealing with the appeal justice be done to the firm and their creditors, to whom a considerable amount was owing. Mr Doull from Durban was present on behalf of the creditors who were deeply concerned in the matter. There had been rumours that the firm was unable to meet its liabilities, but he assured the Board that it had assets to cover all liabilities, so the firm was quite solvent. Should the insurance companies make *ex gratia* payments, M M Amod would be able to rebuild the premises, but if they simply stood on their legal rights, the premises could not be rebuilt. If the application is not granted, they will be faced with the serious position that they will be unable to apply for renewal of the licence. If however the application is granted, the new premises (on Erf 3) will be licenced, and the old premises will not be licenced. But No 1 firm will be in possession of the old premises if they are rebuilt by the end of the year. The new premises are 64 feet in length against 60 feet in the old premises. The new building covers practically the same area, and the Board would realise, cost a considerable sum. After the fire they concentrated on the new premises rather than start rebuilding on the old site, purely in view of the assurance received from the Licensing Officer that they would be allowed to trade on these premises. Mr Rawlinson then quoted authorities bearing on the case. N L R 1913, pages 241, 242 and 245, *Caroodin versus Dundee Chamber of Commerce*. He therefore simply asked the Board to follow the advice of the Judge President in that case and deal with the question in the interests of the public as well as the appellant firm. A large number of the residents of the town had been doing business

with the firm, and the fact that the two firms carried stock amounting to over £20 000 proved they were doing a lot of business. They were one of the leading firms in the town, and the Board must consider the interests of the public, and on grounds of justice, he thought the appellants were entitled to succeed. They should look at it from a broad point of view and as an act of justice. Dealing again with the reasons of the Licensing Officer "that it is not desirable to extend the scope." Surely the appellants are entitled, if they get the support of the public, to extend their trade. They are not seeking to extend the scope of their licence, they are simply seeking to extend the scope of their trade. The old premises were not a credit to the town, but the new premises were quite desirable. The people were entirely right in erecting more commodious premises, which would be for the benefit of the public. They were partitioning the various departments. It was the Sanitary Inspector who compelled the appellants to erect the premises for which they seek the licence. It was not a duty of the Licensing Officer to say that because a man's trade is increasing, he must not increase the area of his shop. They are entitled to follow up the trade for their own benefit and for the benefit of the town. If the application is refused it will be the same as cancelling the licence as from the end of the year, as owing to the losses sustained, the applicants will not be able to rebuild the premises before the end of the year, and they will not be able to apply for a renewal of their licence. That would be a serious hardship to them and to their creditors. The Licensing Officer, in his third ground, has assumed that the firm is in a position to rebuild, but the Insurance Companies having repudiated liability the applicants are not in a position to do so. If, however, it is the wish of the Board, they are prepared, when the premises are rebuilt, to transfer back to these premises. The Board would be entitled to make that a condition because the Supreme Court laid it down that Licensing Officers are entitled to make certain suggestions and issue order regarding licences (N L R 1913, page 483 Noel) re not, employing Asiatics. It is therefore within the authority of the Board to make certain stipulations. There is another case which bears slightly on this (N L R 1917, Nair vs Naidu v Maritzburg Town Clerk). The Town Clerk is entitled to enquire into suitability of the premises rather than the

suitability of the locality. In the present case the premises are much more suitable. Further, the premises are moved further up the town, so that the licence is moving in the right direction. He would remind the Board that when the members took their seats they assumed certain obligations as to their duties, and he felt sure if they looked upon the application in justice and right, they would grant it. The Licensing Officer's reasons are not borne out by the evidence. No evidence whatever was led in rebuttal, nor had the evidence any bearing on the reasons given. The Licensing Officer did not convey to the applicants that he had any objection to the application on the grounds which he has given, and the applicants had no opportunity of giving evidence on those grounds. These objectors did not give any evidence whatever.

Councillor Andrews: I understand from the record there were two separate firms carrying on business in the premises that were burnt. Is it right to say that the partners in No 1 firm had a licence and No 2 had a licence also?"

Mr Rawlinson: "One firm has four partners, and the other three partners, the latter being also partners in the first mentioned firm. They have carried two distinct licences. Three of the partners in No 1 firm are concerned in the present application."

Councillor Andrews: "Who were the members of No 1 firm registered with the Registrar of Deeds?"

Mr Rawlinson: "The partners in No 2 firm are Moola Mahomed Amod, Amod Cassim Moola, Essop Abraham Moola and Mahomed E. Moola. The first, third and fourth are partners in No 1 firm. The partners are still living except Essop A. Moola who died at Mecca."

By Councillor Turnbull: "These other partners are living in Ladysmith."

Councillor Brockbank: "The application is in reference to No 2 firm. Does firm No 1 intend to carry on?"

Mr Rawlinson: "They were licensed for half the premises, and if they can rebuild before the end of the year, they will apply for a renewal, but they can use the whole unless they

apply for a new licence. They can only double the area with your permission."

The Chairman: "They cannot erect new premises on the old site for lack of money."

Mr Rawlinson: "At present the creditors do not know where they are. The applicants are in the present premises under sufferance, and they must be in possession of the premises. They had a total loss of £11,000 and their loss was not insured."

Mr Johnson in addressing the Board, stated that Mr Rawlinson had made a point regarding the considerable loss sustained by the appellants, but he, (the speaker) failed to see how that affected the application or in what way it is a ground for transfer.

Apparently the buildings were insured for £800, but it is discovered that this amount was tied up with the National Bank. That however, has nothing to do with the application for transfer, or how it should be argued as in favour of it. Then the appellants have lost their stock, and it is discovered that the firm did not cover this stock with insurance. If they failed to take ordinary business precautions that is really a reason why they should not have a licence.

When the Firms Registration Act was passed in 1908, the appellants chose and registered the name of "Moola Mohamed Amod" but they soon tired of this and started trading without any legal authority as, M M Amod No 1 and M M Amod, No 2, thereby abbreviating and adding to the firm name. It was in these names that their licences were granted to them and it is in the name of M M Amod No 2 that they now apply for the transfer of the licence.

Now let us look at the legal results of this action. In the first place a firm, when it is registered and christened under the Firms Registration Act, becomes what is legally known as a "Creature of Statute." In other words it is created by law and as soon as it deviates in the slightest degree from its legal and registered name, it loses its legal entity. This is what the appellants have done. They have not only abbreviated the name, but they have tacked additional matter on to it, with the result that all the transactions in connection with their licence

have been carried out in the name of a person who is, in the eyes of the law, non-existent. Two results follow —

First, the licence which was granted to those people, was granted to persons who, in the eyes of the law, did not exist.

It accordingly follows that the licence does not exist and cannot be transferred. In the second place, the present application is made by a person who, from a legal point of view, is non-existent, and the result is that the present application is bad and cannot be entertained. In this connection, he noticed that the appellant states his firm, namely, "M. M. Amod No 2" is registered under the Registration of Firms Act of 1906. I challenge him to produce proof of this. This would be more really understood if the relevant section was referred to, which enacts "every person carrying on business in Natal under a firm name shall register in the manner directed by this Act, the name under which his business is to be carried on." As has been seen, the firm was registered under the name of "Moolah Mahomed Amod" and they carried on business under the name of "M. M. Amod No 2."

Now let them see what the Act says about this change. ... Section 10 enacts —

"Whenever a change is made in the firm-name of any firm required to be registered under this Act, such firm or person shall within one month register again as in the case of a new business, and shall within the same time publish in the Natal Government Gazette a notice giving the particulars of such a change."

The appellants have failed to do so with the result that they are unknown to the law, and the persons responsible for the firm's registration are in danger of having the penalties provided by Section 11 put into force against them.

The fact that the premises condemned was no ground for appeal. When the fire took place the appellants were given permission to go on trading in the new buildings pending the re-erection of new premises. Why therefore, should there be an appeal on the grounds of justice? It is generosity they want. They have been prejudiced.

It was pleaded that they were unable to rebuild, but whose



fault was that. Apparently their insurance money was mortgaged to the National Bank. Surely that was their own fault, and that cannot be brought forward as a ground in favour of the transfer. Here they had two firms which were for all practical purposes one firm only. The Bye-Laws say that only one licence is necessary under one roof. What is to prevent them putting up a building under one roof on the site, and then it will be a question as to whether they are not entitled to a licence on the old as well as the new site. He could not see the slightest reasons why they should get the transfer to the new store, nor for the learned friend to claim that in justice they were entitled to it, and he strongly objected on behalf of the Chamber of Commerce to the transfer.

The Licensing Officer having stated that he had nothing to add to the reasons already given by him, Mr Rawlinson addressed the Board in reply. He asked if these people had been Europeans would this objection have been made. He was sure that if they had been Europeans there would have been no objection. Who was going to be prejudiced because these people had moved up 60 feet. Then they altered their firm name and added No 2. The Licence for 1924 is issued simply to M. M. Amod. The present Licensing Officer had shown "store No 2" and yet they were being blamed for his action in his application he simply showed No 2 to distinguish it. He considered the Licensing Officer acted quite right. The mistake was made by the Registrar under the name. He could not follow his learned friend when he argued that the firm was non-existent people. He used the same argument before the Licensing Officer, but the latter would not swallow it. The firm is registered properly, and if it was wanted to alter the registration to Moola Mahomed Amod instead of M. M. Amod, it can be done to please the Board. It was the firms' misfortune that their stock was not insured, and he asked the Board to help them. More care was taken of uninsured than of insured property.

The Board, after considering the arguments, upheld the decision of the Licensing Officer, and dismissed the appeal.

While the Ladysmith Licensing Board laid down the principle that there shall be no stop for the expansion of the Indian

trade, the undermentioned report of another case demonstrates the sense of justice actuating another Licensing Board in another District of Natal. The "NATAL ADVERTISER" of Durban, published in its issue the report of a Licensing case from its special Correspondent at Estcourt. The following is the full report —

An application by E M Haffjee for a new store licence in respect of extended premises came before W H Pitcher, Licensing Officer. Mr Theo Hellet and Mr R M Drummond appeared on behalf of the appellant, who also presented a petition signed by 174 European residents of Estcourt, while Mr J M K Chadwick opposed the application on behalf of five objectors, Messrs T Brickhill, H Brickhill, Thomalla, Doig and Collins, all shop-keepers.

The first to give evidence was Dr J B Brewitt, who said he knew the applicant, who had been a storekeeper in Estcourt for thirty eight years. Witness was mortgagee of the premises in question, having advanced the money, as he understood the premises were to be occupied as stores and offices. The plans showed the premises to be a store. Witness stated that he understood the Council had compelled Haffjee to put up these premises. In witness opinion, Haffjee had improved Harding Street more than any one else in Estcourt during the last ten years. The premises sought to be licensed were all in one with his present holding and were eminently suitable for a store. He had also found Haffjee law-abiding and up to-date.

Cross-examined witness stated that he did not know details of the shop, but knew that Indian silks could be obtained there and that many wedding presents were obtained at Haffjee's by Europeans. The shop was always full of customers whenever he went through, and it was evident that an extension would be an advantage for the white people. Witness said he was mortgagee for £3,500, and he had lent the money knowing the property had always been licensed to Indians.

#### A GOOD SITE

Mrs Francis, the next witness, also stated that goods could be purchased at Haffjee's which could not be bought elsewhere in town. She instanced silks, brassware, beads and trinkets suitable for fancy dresses for children's entertain-

ments The store was quite as modern as other European stores, but she did not deal much there, as it was frequently full of Natives She did not agree with the objectors who claimed that Haffjee's present store was sufficient for his needs She considered Haffjee was the best judge of his own needs Witness knew the premises in question and considered them among the finest in town and quite suitable for European customers The position was perhaps the best corner site in town

Owing to the prices prevailing in town, a great many people sent away to mail order houses Prices were probably high owing to insufficient competition Another local licence would help to remedy the difficulty, and much of the trade which was going out of the town, would come back, and incidentally everyone including the store-keepers here, would benefit

Cross-examined, the witness said she did not deal with mail order houses, as she endeavoured to be loyal to the town she lived in When asked why people dealt with these firms, she replied, firstly on account of cheapness, and secondly when goods could not be obtained locally

In reply to a question, she said she would not say a new licence would bring local prices in line with Mail order prices, but it should go some way towards it, allowing, of course for railage and purchasing in bulk

On the question whether Natives would use new premises, she replied that the Natives were already accustomed to the other part, and Natives did not care to shop with European customers, and they nearly always had to wait till the last

#### A HARDSHIP

The witness considered it an injustice and a hardship that the owners had been compelled to put up these expensive premises and that they were not to be granted a licence

Mrs Briggs next stated in evidence that she was a married woman with a family of five and a widowed mother and orphaned sister to support on less than £30 per month, so that the question of ways and means was a considerable one Witness did dress making for people in town, so knew a great deal about prices of drapery and where it could be purchased Applicant's store was up to date, and the goods supplied by him

were equal in quality to those of any of the other stores. The same quality of silks could be bought at 1/—1/6 per yard cheaper than at the other stores.

The witness said that she believed in getting 20s worth to the £, and in the other stores, she considered she got only 15s worth. She went frequently to Haffjee's and met numerous town and country European ladies there. There were very few whom she had not seen in the store, as well as many men, railwaymen, policemen etc. In answer to questions, witness said that she got civility from all the other stores. The bulk of her own household requirements she got from Brokensha's, her purchases at Haffjee's being chiefly in connection with her business as dress maker. She did not like to shop among Natives, and she considered Haffjee should have a place for European customers only.

Mr D B Webster, butcher, stated that he had been in business in Estcourt for three years. He knew applicant and had helped him to obtain signatures, all of which were given quite willingly and frankly. The witness corroborated the previous evidence with regard to purchases, mentioning in the case, spices necessary for his business and Native boys' smokes. For some months, witness had been Manager of the Public Service Stores and when he ran out of any line of stock, he tried to get it from European stores, but was refused, as he was a competitor in trade. Some did not actually refuse, but offered to supply at the ordinary retail rates. He was thus obliged to go to Indians, who supplied him at the rates usually given by one store-keeper to another. Most of his trade was with Europeans and he did not go to Indians for cheapness, but in cases of necessity. He considered that Europeans, men, women, and children should be able to deal at the store without having to be jostled by Natives. He had seen many white people in this store—he should say 99% of the white population had dealt with this store. Prices were right and they received courtesy. Witness enumerated articles not stocked at the European stores, German prints, Indian shirting, Native blankets, socks, coloured flannel, youth's suits in greater range of sizes, coriander seeds, turmeric.

#### ALSO OPISED

Cross questioned, witness said that he was not an agent for

Haffjee, it was simply a friendly action getting the signatures. The same persons opposed himself, when he wanted a licence. Witness did not buy his general household from applicant, but from Brokensha. He only dealt with the Operative Stores, and Thomalla. He considered it expensive, the European stores getting from 22 to 33 1-3% more profit on their goods than Durhan firms.

Ismail Amod Jeewa, said Haffjee's store and the put sought to be licenced, all belonged to his father's estate. The former wood and iron building had to come down by order of the Town Council, or they would lose the two licences, the applicant's and Vawda's. The estate spent over £4,000 in meeting the Council's demand. Two applications to the Supreme Court were necessary in order to obtain the money and the new buildings were erected as shops either for European or Asiatic. He was paying 7% on the loan. Then the one licence, Vawda's, was refused and that meant a big loss. He blamed the Council for that, and Vawda appealed, but lost, the court saying, Vawda kept his books carelessly. If this present application did not succeed, Haffjee would have to pay the rent nevertheless.

Cross examined, witness stated the present new buildings were used to store ploughs, bales of blankets, beds etc.

There were two entrances to the old store, one of which was used by Europeans.

D M Haffjee corroborated what had been said about the premises, the rebuilding, the tenancy by Vawda and himself, and produced various documents and plans in support. His business had increased in the new building and his European trade had developed both with all sections of the community and with the European store keepers. He produced vouchers of business with Brokensha, Operative Stores and H J Brickhill. These transactions were of daily occurrence. Owing to complaints by European as to having to mingle with Natives and their suggestion of a separate store, he was applying for this licence. Last year he purchased over £4,000 worth of stock, this year up to £6,000 and was still purchasing his stocks including several items not obtainable at European stores, e.g., brassware, fugi silks, Indian sheetings, table covers, and other Eastern goods.

Mr A G Thomalla, one of the five objectors, said that there were twelve retail and wholesale businesses in Estcourt to a population, he should say, of about 1,000. He thought the existing licences sufficient. The one held by applicant should cover his needs. There were restrictions to his trading under his present licence. It would be one more Asiatic licence in town.

Cross-examined, witness said he would object if Brokensha wanted a new licence. He would not object to extension, if no new licence had to be given, but he could not say if he would, it would be possible to carry on the business without a new licence. The granting of the licence would not affect him much.

C W Landsav, Manager of Brokensha's grocery, in reply to questions, rebutted the evidence of witness, Webster, in regard to prices.

Mr Theo Hellet then addressed for the applicant. He said the objections were merely formal, weak and unsupported by evidence. The underlying thought was Asiatic. A large number of residents—174 in all—signed the memorial. Ladies went from one shop to another for their requirements, and they had a perfect right to shop at the applicant's and in happy conditions not mixing with Natives. The new building, the smallest in town, naturally drew the Europeans and so trade had grown and the stock increased because of European trade. The previous licence fell away and it was natural the owner should not want his premises to be idle, nor was it in the town's interest to have a most prominent corner shop vacant. If the objections had been supported by a memorial, it might have been said that the town was equally divided.

Mr K M Chadwick then addressed for the objectors. He said Mr Hellet had forgotten it was a rule in law, and certainly in licensing matters, to prove necessity, even if there were no objections. The only evidence to prove necessity was customers had asked him to extend his premises. The value of the petition was in support given it.

The Licensing Officer refused the application.

At the Annual Congress of the Associated Chambers of Commerce held recently at Durban, the following resolution was discussed —

Mr Webster, (Potchefstroom) moved "That this Chamber views with satisfaction the Government's efforts at solving the Asiatic Question, as set forth in the new Asiatic Bill to come before Parliament next session "

Mr Webster said that at Potchefstroom and other towns in the Transvaal, they felt very grateful for the practical measure which the Government were introducing during the next session to relieve the anti Asiatic feeling in the Transvaal

Mr Cooper (Krugersdorp) seconded

Mr Gundelfinger (Durban) spoke in opposition and hoped Mr Webster would withdraw his motion until he had a full opportunity of studying the Bill

Mr Paine (Greytown) expressed agreement with Mr Gundelfinger's remarks

Mr Musket (Cape Town) thought the Bill should be referred to the General Executive and that a special committee be formed to consider the measure. He did not think the Congress should vote at this stage on such an important subject with the little information they possessed at present

also that Natal had their legislators to thank for the incursion of the Asiatic. In the Transvaal they had also to compete with Asiatics in commerce, and in a lesser degree in agriculture. Mr Webster went on to say that although he was not a supporter of the present Government, he must say he appreciated what they had done to deal with "this dark subject" —(Laughter) It was up to the Congress to show their appreciation of what the Government had done. Mr Webster then moved the following amended resolution "that this Congress views with satisfaction the Government's efforts at solving the Asiatic Question, and requests the Executive of the Associated Chambers of Commerce to examine the proposed Reservation and Immigration and Registration Bill, and also to obtain the considered opinion of the constituent Chambers thereon prior to the next session of Parliament."

The amended resolution was adopted.

Therefore, having regard to concrete instances we have quoted above and the experience which the community has gained under the present drastic administration of the Licensing laws, the present traders, who are scattered all over the Urban areas, would either be driven by inevitable logic of facts or by force of circumstances into the would be location. On the whole, one can state with tolerable certainty that the so called protection afforded to existing rights is more imaginary than real, and the effect of this Bill would be annihilation of the trading class of Indians. When the case of M M Amod, who by sheer misfortune lost £29,000 could not evoke human sympathy and when the case of Haffjee, could not bring the authorities to their sense of duty and justice to a man, whatever may be his nationality, who has been a resident in the District for over 35 years, he should be an optimist among optimists, who would swallow holus bolus the sweet utterances of the Minister in the matter of the protection of vested rights under this Bill!

While such being the effect of Section 5 that would compass the ruin of the wealthiest section of the community, viz traders, Section 10 confers power for restraining the alienation of landed property to Indians, and inferentially authorises the inauguration of a policy having for its object, the rounding up



resulting in bloodshed, misery and great loss of lives and property !

Now let us consider for a moment the provisions of Section 10 which are as follows —

“The Governor may by proclamation in the Gazette declare that from and after a date to be specified therein no member of any race indicated therein shall acquire immovable property or the lease or renewal of lease of immovable property in the Province of Natal save in the coast belt as provided in sub-section (2) of this section provided that nothing in this section contained shall be deemed to prohibit a renewal of the lease of immovable property held under written lease at the commencement of this Act

(2) “A person who is the member of the race indicated in any proclamation issued under sub-section (1) of this section may acquire immovable property or the lease or renewal of lease of immovable property in the coast belt from a person who is a member of the same race but from no other person except where the immovable property or the lease or renewal of lease of the immovable property acquired is within the limit of a class area established under this Chapter within the coast belt

(3) “From and after the day specified in any proclamation issued under sub-section (1) of this Section, no member of any race, indicated in such proclamation shall by testamentary disposition acquire any land or interest in land or the lease or occupation of any immovable property in the coast belt, except from a person of the same race

(4) ‘For the purpose of this section, the coast belt means so much of the Province of Natal as lies between the coast line and a line to be defined by the Governor General by proclamation in the Gazette corresponding as far as practicable with the coast line and drawn at an approximate distance of 30 miles therefrom”

It would be evident, that the provisions of the aforesaid sections, would afford fitting weapons in the process of a “considerable reduction of the Indian population” as Dr Malan put it, and thus the ruin of the Indian trading and agricultural class, would be compassed

While the wealthy and industrious section would be operated upon under the sections referred to above, with a view to cripple, cabin and confine them and subjecting their wealth, properties and their means of livelihood to risks bordering on confiscation or expropriation, the artisan and working class Indians have not been left alone to pursue their avocation unmolested. And in fact they have already commenced to feel the pinch of the Apprenticeship Act and Minimum Wages Act—an Act which is going to retard the industrial expansion of this young country—nay in all probability it might strangle the rising industries. One can understand the need for a measure of this kind provided there were circumstances warranting it. In an interview recently granted to the Natal Mercury, Dr Malan, the Minister of the Interior raised an alarm and suggested the reason for his Bill thus — “One thing is clear, and that is that under the existing circumstances and the position will be worse, if we are satisfied with a policy of drift, there is no future for the European in Natal. Any way, with the Indians way of living, competition is too unequal altogether.”

After a stay of three days in Natal, the Minister arrived at such a prompt decision on the alleged menace of the Indian. But if he looks up the history of Natal, he would find that the white man had to run away, because he could not earn three shillings a day or much less prior to the advent of the Indian and it is due to the latter that the European has been placed in the vantage position which enables him to compete now. Hence it is not at all surprising that Dr Malan has expressed himself thus because, the leaders of all political parties constantly use the Indian and Native questions for making political capital out of it and for catching votes, and so far, no authoritative commission has asserted the decline of the financial stability of the white race owing to the so called unfair competition on the part of the Indian trader and Indian worker. So long ago as 1914, the Economic Commission, after an exhaustive inquiry, recorded their opinion thus —

“Your Commissioners failed to discover evidence proving that skilled labour has suffered seriously from the competition of Indians.”

The Asiatic commission have remarked on the baseless nature of the alleged Asiatic menace

Not long ago, Mr Patrick Duncan, an ex-Minister of the Crown expressed his firm conviction that, "Given a fair chance, the white man could hold his own with the Native in the matter of skilled labour." However, it is a patented fact that so long as a white man is not an incorrigibly lazy fellow, he gets preference in the labour market, even though he is the most incompetent and uneconomic man. In this country, the utility of white labour is not judged by its economic value in the body politic, but it is judged by sentiment due to racial considerations.

Such being the real state of affairs, it is needless for us to emphasize that there is scarcely any reason for protecting white labour against the alleged encroachment of the Asiatic and other non Europeans on the white man's field of activity. But the labour Ministers think otherwise. To them recommendation of Commissions are worthless and so many scraps of paper if they do not suit their political purposes. To them experts in economics and social science seem to be nothing but tyros if the latter's opinion do not coincide with the requirements of the Ministerial expediency. So, in the present case, despite the opinions of the Asiatic and the Economic Commissions to the contrary, the Labour Ministers have been persistently preaching throughout the country that the white man is going to the wall by unfair competition of the Native and the Asiatic even in semi skilled industries and in order to bolster up and keep alive this ember of fiery agitation and with a view to justify their assertion and also to demonstrate to the labour world that their leaders in the Cabinet are really protecting the white man's interest, the Minimum Wages Bill was placed on the Statute Book.

cratic Board after finding out the exact nature and composition of an industry, recommends to the Minister a tariff of wages not based on any rational grounds or the earning capacity of a particular industry to pay but solely on political expediency with the ultimate object of manning the whole skilled and semi-skilled industries by European labour. In other words, the Minister is commanding the proprietors of various industries to pay not an 'economic wage,' but wages fixed by him according to his sweet will, whether such industries pay the employer or not. Indeed the various industries of the country, instead of running their factories on business principles, have been told to run them as if they were philanthropic institutions, at the behest of a Minister who must carry out the orders of the Trade Union on conditions not adaptable to the business requirements of the man who has incessantly toiled to establish his business investing his own capital and devoting all his talents and energy for it.

Indeed, as a result of the sudden disturbance in the economic structure of the country, many industries are likely to be shaken up and more than one European capitalist have spoken to the writer as to the precarious condition of their concerns. They are now faced with a situation which must be met either by closing down their factories or pay higher wages. By so doing, the industry in question may not pry at all.

The present Wages Act hits the Indian in two directions. One is, the Indian operatives employed in European owned factories doing semi-skilled and skilled labour, are being replaced by whites, because, the white employers naturally prefer engaging men and women of their race when there is no material advantage to be gained by employing Indian labour, consequently scores of them find themselves thrown out of work. The operation of the Wages Bill having the aforesaid effect on the Indian workers, it seems to have inflicted a double blow on the Indian owned industries. If the unemployed Indians seek to find a billet in industries established by their own race, then the Minimum Wages Act steps in, and enjoins the owners of the Indian industries to pay the standard rate of wages fixed according to the tariff governing Europeans. Naturally, Indian owned industries cannot pay such high wages, owing to their restricted—nay—narrow field of production and distribution, and

so, finding a means of subsistence or absorbing our unemployed among Indian owned industries being out of the question, the Indian community is now faced with a problem more acute in its intensity than even the Asiatic Bill. The Wages Bill, in effect, has thrown out of work a large number of Indians, and it is certainly strangling, if not indirectly compelling the closing down of Indian owned industries.

During the passage of this Bill, which was hotly contested by the Opposition, Mr Patrick Duncan, in a moment of utter despair exclaimed thus — "Never in the history of man, legislation of this kind, have been put into operation without disaster to the Nation."

Gen Smuts, the leader of the Opposition losing all hopes of bringing the Ministerrialists to a sense of proportion and reason implored the House thus — "Are we going to strangle ourselves," and proceeded to persuade the House in the following eloquent language —

Gen Smuts, said the more he studied this Bill, the more he saw how far-reaching the consequences were going to be. It was a dangerous Bill, and what made it worse was that it had not been adequately discussed in the House. The most important, probably the most far-reaching Bill before the House this session, had been closed through some of its main provisions without a proper opportunity of discussion. He had been unable to find out who really wanted the Bill. So far as one could judge from the evidence before the Select Committee the workers did not want it, but wanted a different Bill—the sort of Bill the late S.A.P. Government introduced in 1921. Nor did he gather from their attitude that the Nationalists wanted this Bill.

The silence of the Nationalists on this Bill General Smuts described as ominous. He had often noticed a look of disgust on their faces when the Bill was being discussed, but he was sure many hon. members opposite had the feeling that they could not help themselves. The price of alliance had to be paid. As a Party, the Nationalists would never have been responsible for a moment for a measure like this.

## A REVOLUTIONARY BILL

"I am profoundly sorry for this, the leader of the Opposition proceeded to say

"I am not only sorry that we are passing through the Legislature of this country a thoroughly dangerous measure, but I am also profoundly sorry that it should be the part of the Nationalist Party to help in passing this measure. If it had come from the Labour Party it would have been different. We would have looked upon that as in some sense in line with the policy of the Labour Party. Here we have a Bill far reaching revolutionary in its character, which is being put through this House by a Party which professes to be conservative and to stand by the great conservative interests in South Africa. I am profoundly sorry, because I see that the Nationalist Party has put itself in a false position. The day will come when it will bitterly regret this Bill. The Nationalist Party if it endured in this country, will bitterly regret that it ever took part in the passing of a measure of this kind, then however, it will be too late."

## WORST POSSIBLE METHOD

There were various methods of providing for a Minimum Wage but the Government had adopted the worst possible. General Smuts could only imagine that the Bill was the creation of the Minister himself and Colonel Creswell's Party apparently did not want it. The Bill meant a maximum amount of Government interference in the industries and the business of the country. Minimum Wages would be settled by a Board or Boards of Government officials and be brought into operation by a fiat of the Minister. Every business in the country would have to pay Government wages and Government interference was a blight on industry.

Unlike the system laid down in the Conciliation Act, which allowed wages to be fixed in a democratic way by each industry itself, this Wage Bill would lead the Government into every sort of dispute which concerned an industry. If the Minister had been reasonable he would have been satisfied with the Conciliation Act passed last year, and he would have supplemented that Act in respect of those industries where the employers and

employees were not properly organised. The Minister, in his second reading speech spoke in that sense, but it was quite clear, from the final form in which the Bill was now before the House, that, that was not so, it being entirely within the discretion of the Minister to apply this Bill to any industry in this country, be it most highly organised or disorganised. This Bill would become a governing factor in the country's industries and would drive out the Conciliation Act. If the Minister did not put in force the wages recommended by the Board naturally a "strike" must be expected, which in such a case would not be against the employer but against the Government. A large section of the people, with great political power behind them, would be defending this thing, because they would look upon it as their Magna Charta.

While the fate of the artisan and working class Indians have been made sufficiently miserable by the passing of the Apprenticeship Act which has debarred the rising generation of Indians from learning any skilled trades, and by the passing of the Minimum Wages Act, it has incapacitated them from earning an honest livelihood, an active propaganda is being carried on by the Honourable Tielman Roos, the Minister of Justice, with a view to inflame European public opinion and fomenting race-hatred against the educated class of Indians who are employed in a clerical capacity in Natal

Laws already exist prohibiting Indians from being employed in the civil service of the country. The only opening that is left open to educated people is in the capacity of clerks in private firms or legal offices. In Natal, owing to the prevailing race-prejudice, Indians are seldom employed as clerks by European firms, but in few lawyers' offices, where the service of educated Indians is indispensable, owing to their proficiency in the Indian and English languages, a handful of Indians are employed in order to enable their respective employers to efficiently discharge their duties to their clients. Indians, employed in such a clerical capacity, may not exceed a couple of dozen in number altogether. While such being the real facts, the Hon Tielman Roos, the Minister of Justice, in a speech delivered at Maritzburg expressed himself thus on the alleged menace of the Indian clerks to the white race —

"As regards the Asiatic question, they would see by the measure introduced by Dr Malan, that the Government was dealing with the question as far as that Bill was concerned. He, (Mr Roos) was making an appeal to the whole of Natal to see that this Bill was placed upon the Statute Book during the next session of Parliament. (Applause) They wished to arrive at the point when by "repatriation" they would have reduced the Indian population to the irreducible minimum. What concerned him most that night, was not the alienation of a 'black Africa or yellow Asia' as Gen Smuts had said, but the future for a white Africa— (Applause) He had been told that solicitors in Durban employed Indian clerks, who dictated notes to European typists. If this was so, the men who were responsible for



the employment of these Indians were a menace and disgrace to the white race. It was hardly imaginable that such could be the case. If he thought that his daughter would be compelled to accept such a position at a latter period, he would prefer to

#### CUT HER THROAT TO DAY

He had also been told that solicitors were sending their Indian clerks to the Courts to issue summonses, and that these in the process were rubbing shoulders with European girls. He would look into this with a view to using existing legislation to prevent such a practice from continuing and, if necessary, to introduce legislation to ensure that only enrolled solicitors should be able to obtain summonses in future.

Speaking again at Durban Mr. Tielman Roos, dealt with the Asiatic question, and incidentally remarked —

"A question of considerable importance not only to Natal but the Transvaal was the Asiatic question which was being dealt with under the Bill introduced by Dr. Malan. The general idea was that they should try and induce as many Indians as possible to leave the country and accept repatriation to India, and so far as the ownership of land in Natal was concerned to narrow down the places and conditions under which Indians could purchase land. The encroachment of the ownership of land was a greater menace than the encroachment in commercial life for it would ultimately give the Indians a greater influence in the councils of the country.

The feeling in Natal on the Asiatic question, said Mr. Roos, was not as it was in the Transvaal. Before he took office, Indians were employed by the Deputy Sheriffs to serve processes and when he made a charge and shackled the new appointments by making a condition that no Native or Asiatic should be employed on this work, there was an outcry in the Press.

#### ULTIMATE TO SOLICITORS

Mr. Roos made further reference to the complaints about summonses being taken out from the same offices by European girls, Indians, and Natives. He had given the local solicitors a long period in which to rectify the position, he remarked

but if they persisted in sending Indians to the Law Courts to take out summonses, he would see if it was not possible to remedy the position under the existing law. If it was not, he would introduce legislation which would force the solicitors to go themselves to the clerk of the court. (Loud applause)

Only by enlightened public opinion could they deal with this question. Not only the solicitors were to blame, for he understood that in certain business offices, Indians dictated letters to European girls. He did not want to mention the names, but any man who allowed that to happen, was a "renegade" to the country. To allow an Indian to dictate to a European girl was an insult to the white race.

"I admit at once that Dr Malan's Bill is not the last word, but it is a great step forward, and I expect the support of every Natal member of Parliament, even without their support the Bill will be put through."

Again, replying to the toast proposed by the Mayor of Durban at a Civic lunch given in his honour, Mr Tielman Roos exhorted his audience thus —

"It behoved South Africans" the Minister of Justice said, "to stand together and defend their rights with their last drop of blood—and he was certain that, if the last right involved the drink matter they would defend them with their last drop."

The trend of the speech delivered by the Minister of Justice, clearly indicates the mentality of the Ministerialists. Here is a responsible Minister of the Crown, who is a lum of the Law, throwing decorum to the winds, gives expression to an inflammatory speech which he knew very well is calculated to arouse the bitterest of racial feelings, and yet he did not take the slightest pains to ascertain whether the subject matter of his speech was based on truth or falsehood! From the trend of thoughts flitting across the mind of Tielman Roos, dispassionate readers could arrive at just conclusions as to why he gave utterance to such a baseless charge against the Indian clerks?

The truth is, the educated class of Indians, has little or no opening at all, and to be accurate, a couple of dozen or so Indians, are employed in solicitors offices as interpreters in order to suit the convenience of the Indian clients and probably

their masters. We are not aware of a single instance in which an Indian was placed in such a responsible position as to enable him to dictate letters to lady-typists, and we make bold to assert that the allegations made by the Minister of Justice are not founded on facts, and, therefore, it is manifest that Mr Roos actually went out of his way to create an imaginary grievance against the Indians, and thus sought to arouse racial passion!

Mr Roos alleged that "the Indians rubbed shoulders with European girls." Before making the charge in public, if the Minister had repaired to the court house and investigated the matter for himself, he would have noticed that there are two separate counters, one for the European and the other for non-Europeans, where alone the respective class of people are received by the court officials for process documents. Thus, it is evident that there is not the slightest chance nor any possibility for an Indian to rub shoulders with European girls. Therefore the charge against the Indian clerks on that score falls to the ground. We understand from enquiries made that the Department of Justice was cognizant of the arrangements made at the Durban Law courts, in respect of segregation of litigants, and therefore, it is surprising to note a responsible Minister of the Crown making such a deliberate statement in public!

Quite apart from the effect of Dr Malan's Bill on the Asiatic question, Mr Tielman Roos, maintains that "what concerned him was not the alienation of a black Africa or a yellow Asia, but the "future for a white South Africa." Even taking for granted that all agree on a 'white Africa' it is difficult to perceive how that goal could be reached either by indulging in a sanguinary performance of "cutting the throat of Mr Roos' daughter" or by dismissing two dozen Indian clerks from lawyers offices! It is indeed, self evident that, in his zeal for gaining support for the Government Asiatic Bill, he has altogether forgotten the duties and responsibilities of his high office, and indulged in statements contrary to facts, and simply used the occasion for inflaming race-hatred! And by so doing, the Ministerialists, apparently, endeavour to shift the responsibility for passing such an infamous Bill, on the British people of Natal! The question is, whether the Britishers this Garden Colony are so dense and incapable of seeing

through this admittedly suicidal measure not only to themselves, but to the Great Empire to which they owe allegiance!

Indeed, the cold reception given to the Minister of Justice by the British people of Natal has evidently upset his mind, and while he endeavoured to explain away his pronouncements on Republicanism which is not quite palatable to a British audience, he made one more effort at his Durban speech to arouse the feeling of the public against the Indians in his reference to the Asiatic Bill. He not only repeated the same charge against the Indian clerks but went a step further and frankly told that the Asiatic Bill would be piloted through successfully, whether Natal supports the Government or not. It is, therefore, plain, that this Bill would become an accomplished measure irrespective of the fact what the people of Natal think about it!

In a word, we may with confidence paraphrase the feelings of the Ministers on the Asiatic Bill thus —

Seeing that Natal is a pro British Province, Mr Lielman Roos, says that "no matter what the consequences of this Bill may be for the British Empire, it is expedient and desirable that the Indian must be cleared out of the country, and in this project, if the British people of Natal do acquiesce, well and good, if not, I can very well do without you." In other words Mr Roos, like a modern political Mephistopheles asks the British people of Natal, in consideration of his giving a few more crumbs of bread, to betray the sacred trust of their motherland, to sign the death warrant of all that is good in the British race viz, their national character the holy traditions of their British institutions and the noble traits of the British people and also the prestige and moral greatness of the British Empire!

This is the sum and substance of the ideas underlying his King's Hall speech, and it is to be seen whether British Natal would become a consenting party to this political piracy campaign of Mr Roos! In his reply to the Mayor's toast at the Civic lunch, Mr Roos, frankly admonished the audience "to stand together and defend their rights with their last drop of blood!"

It is a matter of sincere gratification to note the Minister of Justice laying down the principle that shedding of blood is one of the justifiable reasons in defence of one's rights, but, then, one

On the whole, it must be self-evident that the measures already passed for throwing out of work the artisan and working class Indians, and the weapons under forge on the Legislative anvil for the cessation of all activities by the agricultural, trading and educated class of Indians have naturally raised an alarm in the mind of all sections of the Indian population, and therefore it is scarcely necessary for us to state that the authorities must take note of the tension of feeling caused by their action, if they care to study public opinion in this country

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# ARE BRITISH SUBJECTS "ALIENS" ?

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## CHAPTER II

As the provisions of the Asiatic Bill have been subjected to very serious criticism, especially the remark passed by the Minister, classifying the Indians under the category of 'aliens,' the "Natal Mercury" sought an interview when Dr Malan visited Durban recently. Replying to the complaints made by the Indians to the effect that that was the first time when a Minister of the Crown attempts to treat the Indians on the supposition that they were "aliens," the Minister remarked that "this was not new. By consenting to the withdrawal of the franchise from the Indians in 1896, the British Government tacitly agreed that the Indian community was an alien element, and most of the subsequent legislation on the Asiatic question was based on this principle."

"When I used the word alien in introducing the Bill in Parliament," said the Minister, "what I meant was that the Asiatic population was an alien element, and could never be absorbed by the South African population."

It is, indeed, a matter of sincere gratification to note that the Minister frankly tells the world what he thinks of the Indian, and how he is going to give effect to his policy in order to "bring about a considerable reduction in the Indian population," but, then, by starting with the assumption that the Indian is an "alien," he builds his case on a false foundation.

"The 'Indian' is as much an 'alien' as the 'white man' is in South Africa, because the country is the home of the 'Natives' and as such, no reasonable man could take exception to the term if it was used in that sense. But Dr Malan has not done so. He has specifically used the expression for the purpose of this Bill in so far as the Asiatic is concerned, consequently the Indians take great exception to it."

utterance of Mr Roos against the Anglican Church, described by him as "the High Church of England," stating that their own Bishop is presumably, one of the offending ecclesiastics who have had the misfortune to displease Mr Roos

The Editor adds 'We cannot allow the incidents to pass unremarked. We refrain from expressing any opinion as to the good taste or decency of such attacks made by the Minister of the Crown on a great religious body, though the situation was aggravated by the fact that Mr Roos was at the time the Acting Prime Minister

This irresponsible statement do not suggest serious political leadership, but seem to belong to the region of comic opera and, indeed, the whole proceeding would be Gilbertian, were it not likely to be taken as authoritative. If Mr Roos intended his remarks to be taken seriously he, apparently, desires to veto all criticism of the administration of Justice. The head and front of our leaders' transgression, according to the Acting Prime Minister, is that they have dared to say publicly that the Natives of this country do not always get even-handed treatment in the Courts. They may be right or wrong in their opinion. Mr Roos holds that they must not express it. However considered, however disinterested, however reasoned and reasonable such criticism may be, it is prohibited by Mr Roos. We are no longer to be allowed to express opinions openly, but must muzzle our public utterances, except when they receive the imprimature of the Minister of Justice.

We had imagined in our innocence that one of the factors that had largely contributed to make our Courts as impartial and equitable as they are, is that they were at all time open and liable to just criticism as is now objected to. The tone of Mr Roos's stricture seems to suggest that the real objection in his mind to our leaders' attitude is not that it is unreasonable, but that it emanates from a body which he deems foreign and alien to South Africa.

The church of this Province is alien to South Africa in exactly the same sense as the Dutch Church. The Union Government, the Chamber of Mines, and Mr Roos himself are aliens—that is to say they originate elsewhere. Our Church believes to have originated in Jerusalem, and is, therefore, not indige



nous to South Africa, but she has taken firm root here and desires nothing so much as the lasting welfare and prosperity of the country. We are certain that in this we share the sincere desire of Mr. Roos, and only regret that we cannot always agree that his methods are wisely calculated to secure that end."

However, we have been persistently told that the Indians do not assimilate European civilisation and do not adapt themselves to the standard of living and habits of Europeans! A closer examination would bring home the truth, that given a chance it is possible of accomplishment.

Indeed, it must be self evident that these are baseless accusations levelled against the Indians because no facilities are given them to advance in the scale of civilisation or to acquire knowledge or technical skill or make investments of their surplus funds in concerns that would be productive of profit to themselves and benefit to the community in general. Such being the painful facts, it is unnecessary to make emphasis on the cause and effect of the Indian problem that has been allowed to go from bad to worse and in fact to drift as Dr. Malan rightly remarked, owing to an unsympathetic—nay—truculent policy on the part of those who are guardians of our rights in this country.

However, Dr. Malan, in the "Mercury" interview adduced justification for the attitude adopted towards Indians and pointed out in effect that by virtue of the franchise rights being taken away, with the tacit consent of the British Government, and by the subsequent enactment of further repressive legislation on that basis, the Minister maintains that for all intents and purposes the Indians have become "aliens."

This is really an ingenious argument, indeed, but it is a bit too obtrusive for us to follow. First of all, we venture to assert that by the passing of the Franchise Act of 1896, although certain illiterate people were deprived of their votes, yet, provision was made, as we would show hereafter for eligible Indians to be placed on the Voters' Roll, secondly, by the passing of that Act it was certainly not the intention of either the Natal Legislature or the Imperial Government to treat the Indians as "aliens." If that had been the intention of the Legislature

Natalians would have driven the Indians out long ago, because the agitation against the Indian competition both by white traders and industrialists has been consistent, thorough and as bitter then as it is now. In fact, during the years 1907 and 1908, efforts were made through two legislative enactments to eliminate the Indians altogether, but the British Government declined to entertain any such proposal. However, as a hazy notion exists in the mind of many as to the status of the Indian as a British subject by the passing of the Franchise Act which deprived them of their voting rights, we venture to state briefly the objects of that Bill and the circumstances that gave rise to it.

Ever since the grant of responsible Government to Natal, an incessant outcry was raised against the Indian on political and economic grounds and he was alleged to be a menace to the existence of the white man. In 1896, the Europeans being much smaller in number, dreaded the swamping of the polling booths by Asiatic votes and so, British Natal appealed to the Imperial Government for safeguarding the rights of the British people. So, in 1894, in the first session of the first Parliament, held under the Responsible Government, a very drastic Bill was introduced and after passing into law, it was despatched to the Imperial Government for sanction. Mr Chamberlain, the then Colonial Secretary, refused to advise Royal Assent and he laid it down as a guiding principle for all self-governing institutions that the British Government could not allow in any shape or form legislations having for its object exclusion of the enjoyment of common rights on racial grounds, and so, on his suggestion the Franchise Act, was modified reserving the exercise of manhood suffrage to those and their descendants who had from countries having parliamentary institutions but at the same time, provision was made in the Law by vesting the power in the Governor to exempt those of the resident Indian settlers who were qualified to vote in other respects. In other words, firstly, the door was left open for admission of Indians to exercise the Parliamentary Franchise as soon as India reached the stage of self-governing Dominion, secondly, until such time as India was under the direct administration of the Crown, provision was made by investing the power with the Governor to exempt qualified Indian settlers

from the disabilities to which 'those of their other illiterate brethren are subjected

This is what Mr Chamberlain wrote in his despatch to the Natal Prime Minister —

"Electors of important constituencies in this country have considered Indian Gentlemen worthy not merely to exercise the franchise but to represent them in the House of Commons. I desire, however to guard myself from the supposition that I regard this question merely from the point of view afforded by the experience of this country or that I have not paid due regard to local considerations. It is manifestly the desire and intention of your Government that the destinies of the Colony of Natal shall continue to be shaped by the Anglo-Saxon race, and that the possibility of any preponderant influx of the Asiatic voters should be averted

But the Bill under consideration involves in a common disability all Natives of India without exception, and provides no machinery by which an Indian can free himself from this disability, whatever his intelligence, his education or his state in the country, and to assent to this measure would be to put an affront on the people of India such as no British Parliament could be a party to "

Thereupon, a new Bill was drafted, and in moving the second reading, Sir John Robinson, the then Prime Minister, made the following pronouncement —

"I think I said in the course of my remarks in connection with the second reading of the original Bill that our object was to save the Electorate from being swamped by men who had had no experience in connection with the exercise of privileges of freedom or franchise. This Bill disqualify all persons who are precluded by virtue of their inexperience from the exercise of the high privileges of citizenship

This Bill is the result of negotiations carried out in perfect good faith with Her Majesty's Government, and any departure from the terms thereof would as far as the Government are concerned be an Act of bad faith. I want honourable members to bear in mind that this Bill is the

nature of an agreement which has been entered into between the Home Government on the one part and this Government on the other part. As far as we are concerned, we have done our best in the course of this agreement which involves considerable negotiations which have extended over a period of at least one and half years. We have done our best in the agreement to provide that the wishes of this Colony, and the interest and necessities of this Colony as regards this question shall be fully and completely met. As far as the Home Government are concerned they undoubtedly have done their best to meet our wishes in every respect in so far as the political difficulties they have to deal with will allow."

At the conclusion of the speech, the Prime Minister was subjected to considerable criticism by the Opposition on account of provision being made for the admission of qualified Indians on the Voters' Roll. Replying to the critics, Sir John Robinson said "Certain Honourable Members seem to refer to the matter as if it gave the power to appoint members to this House. It is nothing of the kind. It only gives the Governor-in-Council power to exempt certain Indians from the operation of this Act, but these Indians will have to go through the same test as prescribed to Europeans before he can have his name on the list."

In the course of an elaborate defence of the policy of the Prime Minister, Mr. Harry Escombe, the then Attorney General made the following speech as reported in the Hansard of 1896 — "And here we say while it is absolutely wrong and it would be wicked were we to allow the Indian vote to become paramount in this Colony. I believe it is equally wrong that where these highly educated Indians come to this Colony—men educated at the Universities, men for all we know practising at the Indian Bar, or perhaps lately having a seat in the House of Commons representing one of the largest London constituencies. I say, if gentlemen of Indian extraction, having social standing and advantages such as that, are not to have a means whereby they can obtain an entry to the franchise, the thing is wrong in principle, and we cannot justify the exclusion."

We quoted the above speech from the Hansard Report, and it

must be plain enough from the emphatic and candid utterance of Mr Harry Escombe, who was the Parliamentary Draughtsman and Attorney General, that the Franchise Act was framed in a statesmanlike manner to meet the practical requirements of both the Colony and qualified Indians and also it has been made so elastic as to allow room for free admission of Indians to the Electoral Roll, as soon as India reaches the goal of Responsible Government. Therefore, it necessarily follows, that by virtue of the passing of this legislation, the Indian community was not reduced to the level of an "alien" element, but on the contrary the law has recognised the Indian as a free British citizen but only those qualified to exercise that privilege shall be entitled to enjoy it. So, Dr Malan's argument as to the Indian being an "alien" element in this country by virtue of this Law falls to the ground.

Having endeavoured to refute the argument of the Minister so far, we shall try to prove hereafter, that the British Government have been consistently striving to give effect to the claims of the Indian community for the restoration of their equal rights as British subjects in this country, and we will endeavour to show how they begged, implored, and persuaded the South African Governments from time to time to take a rational view of the question.

To begin with, when Natal, under the responsible Government regime passed several enactments with a view to keep down the Indians, the British Government pointed out the special obligations under which they laboured but then they agreed to close the door against the future entrants of the Asiatics both indentured and free, provided Natal bound herself to treat the Indian settlers in a proper manner. The Secretary of State for India in his despatch dated the 21st July 1897 while accepting the Natal Immigration Act, of 1897, laid down the conditions of acceptance of that Bill and considered himself thus —

"We regret the necessity for restrictions which excluded the British Indian subjects from South Africa, but accept the prohibition of further immigration in order to secure the fair treatment of those who were lawfully settled there. We therefore are entitled to demand fair and equitable

treatment involving complete equality before the law for those Indians who had already been allowed to settle in Natal or who might hereafter under the new Immigration law be permitted to do so "

So long ago as 1897 that is to say, a year after the passing of the Disfranchisement Act, the British Government laid it down as a fundamental principle, while stopping further immigration, to demand absolute equality for Indian settlers here and therefore, it is manifest that the Colonial statesmen have deliberately acquiesced in this compact

Again, after the war, when the Transvaal Government proposed fresh Legislation restricting Indians to locations and in fact sought powers to do what was done under President Kruger's regime, the British Government declined the request in the following terms —

"His Majesty's Government held, that it is derogatory to National honour to impose on resident British subjects disabilities against which we had remonstrated and which even the law of the late South African Republic rightly interpreted did not subject them and they do not doubt that when this is perceived the public opinion of the Colony will not any longer support the demand which has been put forward "

Again, in 1904, when the Transvaal Government applied for a supply of indentured Indian labour to the railways which was being pressed as an Imperial need, Lord Curzon, the then Viceroy, snubbed Lord Milner in the following language —

'He, (Lord Milner) regards it as deeply to be deplored that the Government of India should refuse to permit its subjects of the Labouring class to come to this country The fact is that we are not in the least anxious for the Indians to go to the Transvaal at all The relief thereby given to our Indian problem is infinitesimal and we only lay up for ourselves a crop of trouble in the future Outside the Government of India itself, where the Imperial sentiment is strong, I know of no class, community or individual in India who wants the Indian to have anything to do with the Transvaal The bitter example of Natal is before them "

Thus, Natal and the Transvaal statesmen have gained such

an enviable notoriety for veracity, fair and honest dealing as to drive Lord Curzon to despair and he curtly told Lord Milner that his or for the matter of that, the British Government will have nothing to do with these two Colonies

In 1907 after a considerable tussle between Mr Gandhi and the Transvaal Government since the termination of the Boer War up to the grant of Responsible Government, the Transvaal Immigrants Restriction Act of 1907 was commended to the Secretary of State for India in the Colonial Office letter dated the 5th January 1906 in the following terms —

‘I am to state that it appears to Lord Elgin (then Colonial Secretary) that in order to secure the fair treatment of the Indians now in the Colony Lord Selbourne (then Governor of the Transvaal) suggests that His Majesty’s Government should be prepared to approve Legislation having the practical effect of excluding Asiatics from entering the Transvaal in future Lord Elgin regards this as the only possible course to adopt in the circumstances”

The Secretary of State for India in Council with considerable reluctance, having regard to their past bitter experience with the Colonial Statesmen, in a letter dated the 31st January 1906 replied as follows —

“The Secretary of State for India in Council, while regretting the necessity for a step which entails the practical exclusion of Natives of India from a British Colony agrees with Lord Elgin that the compromise proposed by Lord Selbourne is likely to afford the only practicable solution of this difficult question’

Thus, it is plain from all these protracted negotiations, in not a single instance, the British Government have afforded room either tacitly or in expressed language to draw the conclusion that Indians are other than British subjects

Again, in his despatch dated the 7th January 1907, Lord Selborne the then High Commissioner reviewed the situation in South Africa, pointed the growing difficulty of reconciling the various interests unless some form of Union were adopted and showed that the alternative was the gradual growth of four parate States the disputes between whom might grow to be

so acute as to be capable of settlement only by arbitration or sword. Thereupon, the Union convention, of which Lord De Vilhiers was the Chairman deliberated and the first of its Resolutions that was passed unanimously was as follows:—

“The best interests and the permanent prosperity of South Africa can only be secured by an early Union under the Crown of Great Britain of the several self-governing Colonies.”

The first important legislation, affecting the Asiatics was passed a couple of years after the formation of the Union. The Union Immigrants Regulation Act of 1913 was regarded as a continuation of the same policy inherited from the pre-Union regime and in order to make this undertaking pretty clear Section 148 of the South Africa Act made express provision in that direction. In addition to that, it will appear from the assurance given by General Smuts at the Imperial Conference of 1917 that the Union Government on their side undertook and accepted the position clearly laid down by the Government of India. General Smuts in his acceptance of this undertaking said thus:—

“I wish to say Mr Chairman on this subject specially as the matter of the treatment of Indian Immigrants in South Africa as you know has been a cause of constant trouble not only between us and the Empire of India, but between us and the Colonial Office and India office. I agree with the former speakers that a departure has been made in this Conference in bringing the representative from the Empire of India to this Conference which will go far to obviate the recurrence of such troubles in the future. In South Africa, there has been this fundamental trouble, that ~~the white community have been afraid to open the door~~ wide to Indian Immigration. We are not a homogenous population. We are a white population on a black continent, and the settlers in South Africa have for many years been actuated by the fear that to open the door to another non-white race would make the position of the few whites in South Africa very dangerous indeed. It is because of that fear and not because of any other attitude towards the question of Asia that they have adopted an attitude which sometimes, I am bound to admit, has assumed the outward form although, not the reality of intolerance. Luckily



have got over these difficulties. The visit of the late Mr. Gokhalo to South Africa did an enormous amount of good. His visit was followed later by that of Sir Benjamin Robertson, a distinguished public servant of India who also assisted the Government to overcome great difficulties on this point some years ago. The result has been the Legislation to which both the whites and the Indian community in South Africa agreed. There is still a difference of opinion on administrative matters of detail, some of which, are referred to in the Memorandum which is before us, but I feel sure and I have always felt sure that once the white community in South Africa were rid of the fear that they were going to be flooded by unlimited Immigration from India, all the other questions will be considered subsidiary and would become easily and perfectly soluble. That is the position in which we are now that the fear which formerly obsessed the settlers there has been removed; the great principle of restricting immigration for which they have contended is on our Statute Book with the consent of the Indian population in South Africa and the Indian authorities in India, and that being so, I think, that the door is open now for a peaceful and statesmanlike solution of all the minor administrative trouble which occurred and will occur from time to time. Of course the main improvement has been the calling of India to the Council Chamber of the Empire. Here, if any question proves difficult of treatment we can discuss it in a friendly way and try to find in consultation a solution and I am sure we shall ever find it. I, for one, do not consider that amongst the multitudinous problems which confront us in our country the question of India will trouble us much in the future."

..

we all feel as far as we are concerned, I have told Sir Satyendra myself, that my own attitude has been and I am sure it is the attitude of my colleagues—sympathetic towards the Indian position generally. There are of course difficulties and it would be idle to disguise the fact that many of these difficulties are of substantial importance which have to be faced in dealing with this matter. But I do not despair of satisfactory solution being arrived at.

Sir Satyendra Sinha has been good enough to refer to the attitude adopted by Canada and ourselves in discussing this matter in Committee, and I think, it is only right for our point of view to add that the possibility of arriving at a satisfactory solution on this occasion has been due very largely indeed to the reasonable and moderate attitude which the Indian representatives themselves have adopted but for that of course, the difficulties would have been ever so much greater. As far as we are concerned, it is only fair to say—and it is the truth—that we have found that the Indians in our midst in South Africa who form in some a very substantial portion of the population are good, law-abiding, quiet citizens, and it is our duty to see, as he himself expressed it, that they are treated as human beings, with feelings like our own, and in a proper manner.

“As to the details, I need not go into all of them. Paragraph No 3 embodies, as a matter of fact, the present law of the Union of South Africa. That is our position there, so that our agreement as to that is no cession. I pointed out to Sir Satyendra when we were in Committee that in some of these points which he brought up as affecting South Africa I thought in all probability if he were in a position to investigate some of them himself he would find that the complaints were somewhat exaggerated. I cannot help feeling that, that is the case, but I will not go into these matters now. As far as we are concerned in South Africa, we are in agreement with this resolution and also with the proposal referring the Memorandum to the consideration of our Government and we will give it the most sympathetic consideration we can certainly.”

The understanding that was arrived at was confirmed at the Imperial Conference of 1918, the following being the full text of the Resolution —

(1) "It is an inherent function of the Governments of the several communities of the British Commonwealth including India that each should enjoy complete control of the composition of its own population by means of restriction on Immigration from any of the other communities "

(2) "British citizens domiciled in any British country including India, should be admitted into any other country for visits, or the purpose of pleasure and commerce, including temporarily the residence for the purpose of education. The condition of such visit should be regulated on the principle of Reciprocity as follows —

(a) The right of the Government of India is recognised "to enact Laws which shall have the effect of subjecting British citizens domiciled in any other British country to the same conditions in visiting India as those imposed on Indians desiring to visit such countries

(b) Such right of visit or temporary residence shall in each individual case be embodied in a passport or written permit issued by the country of domicile and subject to visa there by an officer appointed by and acting on behalf of the country to be visited, if such country so desires

(c) Such right shall not extend to a visit or temporary residence for labour purposes or to permanent settlement

(3) "Indians already permanently domiciled in the other British countries should be allowed to bring in their wives and minor children on condition (a) that not more than one wife and her children shall be admitted for each Indian, (b) that each individual so admitted shall be certified by the Government of India as being the lawful wife or child of such Indian

(4) "The Conference recommends the other questions covered by the memoranda presented this year and last year to the Conference by the representatives of India in so far as not dealt with in the foregoing paragraphs of this Resolution, to the various Governments concerned with a view to early consideration "

It is indeed obvious from the foregoing resolutions to which South Africa has been a consenting party that it was never intended that the domiciled Indian settlers shall be treated in the manner proposed by Dr. Milner in the Asiatic Bill

At the Imperial Conference held in the year 1921, the following resolution was adopted —

“The Imperial Conference, while reaffirming the resolution of the Imperial War Conference of 1918 that each community of the British Commonwealth should enjoy complete control of the composition of its own population by means of restriction of immigration from any other communities, recognizes that there is incongruity between the position of India as an equal member of the British Empire and the existence of disabilities upon the British Indians lawfully domiciled in some other parts of the Empire. The Imperial Conference, accordingly, is of the opinion that in the interests of the solidarity of the British Commonwealth, it is desirable that the rights of such Indians to citizenship should be recognised. The representatives of South Africa regret their inability to accept this resolution in view of the exceptional circumstances in a great part of the Union. The representatives of India, while expressing their appreciation of the acceptance of the resolution recorded above, feel themselves bound to place on record their profound concern for the position of Indians in South Africa and their hope that by negotiation between the Governments of India and South Africa some way can be found as soon as may be to reach a more satisfactory position.”

Again, speaking at the Imperial Conference in 1923 when the resolution passed in 1921 was reaffirmed by all the Dominions except South Africa when General Smuts dissociated himself and South Africa from any colour prejudice and asserted that — ‘They (Indians) have all the rights barring the rights of voting for Parliament and the Provincial Council that any white citizens in South Africa have, our laws draw no distinction whatever. It is only political rights that are in question.’

It is indeed transparent that despite the inconsistent attitude of General Smuts from time to time he neither maintained nor acted on the assumption that Indians were “aliens”. But what the gullible General did was he attached insignificant importance to his own word and to his own written documents. When General Smuts systematically violated the settlement arrived at in 1914 the Government of India was constrained to remark

to the Union Government thus, "In the Transvaal, it is apparently considered that the alleged evasion of the Smuts Gandhi agreement is a sufficient reason for denouncing all obligations given whether to Indians in South Africa or to the Government of India or to the British Government. Elsewhere not even this pretext has been put forward, and one view would seem to be that self preservation justifies the repudiation of any undertaking. Fresh restrictions would be regarded not only by the Indian community in South Africa but also by the Government and people of India as a breach of the settlement of 1914 which is universally accepted is a guarantee that the Status which the Indian community had acquired in 1914 would at least be maintained. As has already been said, an undertaking to administer existing laws in a just manner is meaningless, if the rights which Indians are entitled to exercise under these laws could be restricted at will by fresh legislation. It is hoped that these undertakings and assurances will not be dishonoured."

The foregoing extracts from the despatches of the British and Indian Governments should bring home conviction to our readers that while the Paramount Power evincing a very reasonable and conciliatory attitude towards the Dominion statesmen, has been very firm and consistent in their advocacy of a policy in the direction of protecting the rights of the Indian settlers. When Natal proposed in 1896, to disfranchise the Indians, the British Government suggested a compromise by which the rights of the qualified Indians were protected in Law and provision was made to give equal rights when India reached Dominion Status. When Natal and the Union suggested to close the door against the future immigration of Asiatics, the Imperial Government agreed to do so, under the distinct understanding that the lot of the domiciled Indians must be improved to which the South Africans were a consenting party. After exacting a hard bargain in each and every negotiation, in not a single instance, it appears, South African statesmen abided by their part of the compact!

However, about a couple of decades ago, the burden of complaint against the Indian was their alleged political domination then followed a grievance against them on sanitary grounds,

subsequently the movement developed into economic, a little later on, the movement assumed the form of a national menace on "Sanitary, Economic and Social grounds" and now under the regime of Dr Malan it has developed into the form of a "Hydra headed Monster" blatant "racism" plus all the old grievances combined! Dr Malan frankly says that "there is no future for Europeans in Natal in any way", hence, in order to accomplish his object of Europeanising propaganda, he has adopted the line of least resistance, that is to say, he has thrown to the winds, the fundamental principles of the Constitution, turned into scraps of paper their solemn compacts, dishonoured the assurances and solemn pledges of his predecessors in office, and without the slightest compunction expects the world to believe that by virtue of the Disfranchisement Act of 1896, England was a consenting party to dub down the Indian as an "alien"! In his anxiety to substantiate his assertion, the Minister has overstepped the mark. The truth of the matter is, the Indian community will not be deceived in this fashion. In fine, we can safely assert that Dr Malan by this political manoeuvring and by the aid of his packed labour majority in Parliament is endeavouring to proclaim to the world that, though India and the Union are ostensibly members of the British Commonwealth of Nations, in reality, the sacred ties and the wholesome traditions that bind the component parts of the Empire together, exist not in the case of this Union of South Africa. In other words, Dr Malan seeks to raise a grave and far reaching inter dominion issue, and incidentally endeavours to create embarrassment, if not an internecine quarrel, between India and England. On the whole, we venture to say that Dr Malan's methods would not bring India or local Indians to either submission or any more bargaining, because the South African Indian community have nothing more left to give in exchange for any consideration.

# IMMIGRANTS REGULATION

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## CHAPTER III.

We prefaced the first Chapter with the remark that the principle governing this Bill is the elimination of the Indian community and endeavoured to prove how the various provisions in that chapter would facilitate the process of "weeding out" of people pursuing agricultural, commercial, and industrial pursuits. In this Chapter, we propose to deal with the Immigrants Regulation Act and the amendments proposed thereunder which will be utilised as one of the instruments in this process of spoliation and disintegration of the community. It is well known that the Union Immigrants Regulation Act, about which we hope to write at length in our subsequent publication, is a piece of legislation specifically intended to keep out the Asiatics, but then it was never thought that the operation of that law would be pregnant with such possibilities as it has proved itself to be in recent times.

However, drastic as the Law is, the proposed amendment of various sections thereof, evidently aims at getting a more tightened grip over the domiciled Indian population, who have no established trade or calling with the ultimate object of elimination or deportation. In accordance with the Act of 1913 all Asiatics in this world, have been proclaimed prohibited immigrants on account of their "economic habits" and "standard of living." Bearing this in mind, when one reads carefully the powers sought under the proposed amendment to Act of 1913 he is driven to the conclusion that the present Bill has been introduced for the purpose of "hoarding out" the resident Indian population. We give below a fair commentary on some of the important sections of the Bill and how it would affect the vital interests of the community—

### SECTION 14

The present section gives the Minister power to demand a

deposit of an amount sufficient, 'in his own opinion,' to cover detention expenses, the costs of bringing him before the Board and of returning him to the place at which he was restricted or the cost of his return passage by another ship to the place from which he came—and unless such moneys are deposited the Board has no right to hear the appeal

It is now sought to alter the fixing of the amount of such deposit by the Minister and transferring the power to "the Immigration Officer"—but not exceeding £100"

From the remarks of the Minister, published at the time he introduced this Bill, it is abundantly patent that, notwithstanding any camouflage, this Bill is introduced for the purpose of dealing with the Asiatics—by that is meant the Indians—and Indians only

The costs referred to for detention, amount to 1/ per diem, the costs of bringing an appeal before the Board consist of £1/1 per diem to the three members of the Board and the expenses of returning any Indian, 'to the place from which he came' is ordinarily £7 10 0

Now, assuming a Board cannot be called to attend to the case for, say, six months—(an absurd limit)—the cost of the appellant's detention (if kept under detention and not allowed out on bail) would be at 30/ per mensem, £9—now further assuming the Board held three meetings to decide the appeal—the costs of fees to the Board would be £9 9 0 the cost of passage is usually £7 10 0 but even doubling that the total cost would be

6 months detention at 1/ per diem	£9 0 0
3 meetings of Board	9 9 0
Cost of return passage	15 0 0
Total	<u>£33 9 0</u>

Why then give the Immigration Officer power to fix the deposit at £100' It must be borne in mind that, unless such deposit as may have been fixed, has been lodged "no appeal shall be heard"

Under the existing Section, sufficient power exists to ensure



the Government against any loss but to make it possible for an indigent Indian, having rights of domicile, merely because he has been, (perhaps wrongly) declared to be a prohibited immigrant to be called upon to deposit £100, before his case can even be considered by the Board of appeal is, foreign to what is usually British justice. Therefore, it is manifest that the intention of the Government is to render the position so intolerable as to make it prohibitive for an Indian to seek justice.

Paragraph (a) of sub-Section 1 of Section 4 of Act 22, 1913, reads as follows —

(a) "Any person or class of persons deemed by the Minister on economic grounds or on account of standard or habits of life to be unsuited to the requirements of the Union or any particular Province thereof "

Section 4, provides that "any such person as is described in any paragraph of this sub-Section who enters or is found within the Union or who though lawfully resident in one Province enters or is found in another Province in which he is not lawfully resident, shall be prohibited immigrant in respect of the Union or of that other Province (as the case may be)"

16 (n) by the addition to paragraph (a) of sub-section (1) of the following words "Provided that for the purpose of this section the Northern Districts of Natal as described in section three of "The Northern Districts Annexation Act, 1902" (Act No 1, 1903, Natal) shall be deemed to be included in the Province of the Transvaal"

At the present time, any Indian legally domiciled in Natal has the undisturbed right of travelling to, or residing in any portion of the Province (exclusive of Zululand) without let or hindrance. Consequently, an Indian domiciled, say at Durban, would have the right to travel to or reside at Vryheid or Utrecht but under the proposed proviso, he could not do so as no Indian can enter the Transvaal from Natal without consent of the authorities—this, therefore, means the taking away of existing rights.

The mere fact of providing that for the "purpose of this law" one portion of the Province should be deemed to be portion of another Province is most extraordinary legislation.

## SECTION 17.

Sub-Sections (e) and (g) of Section 5, as amended by the Indians Relief Act read as follows —

(Note “Section 5 deals with persons or class of persons who shall “not” be deemed to be prohibited immigrants”

(c) “Any person born before the commencement of this Act in any part of South Africa included in the Union whose parents were lawfully resident therein and were not at that time restricted to temporary or conditional residence by any law then in force, and any person born in any place after the commencement of this Act whose parents were at the time of the birth domiciled in any part of South Africa included in the Union ”

(g) “Any person who is proved to the satisfaction of an immigration officer or, in case of an appeal, to the satisfaction of the Board, to be the wife, or the child under the age of sixteen years, of any person exempted by paragraph (f) of this Section (i.e. a person legally domiciled in the Union, “provided that the wife or the child (as the case may be) is not such a person as is described in sub-Section (1) (d) (f) (g) or (h) of the last preceding Section (i.e. prostitutes, &c &c )

The proviso is very involved but it can be paraphrased thus -

“provided that any Asiatic shall lose protection accorded by this paragraph if he has already acquired or may hereafter acquire a domicile in a Province of the Union, other than in which he was born, this is apparently an attempt to send as many Indians as possible from other parts of the Union to Natal”

If this be correct, then an Indian born in Natal and who was allowed to enter the Transvaal where he has since been allowed to reside can be told he must leave the Transvaal and reside in the Province where he was born

To put it plainly, in order to avoid ambiguity, the proposed Section means that the law would not recognize dual domiciliary rights of any Indian whether he be Colonial-born or Home-born and strictly forbids an Indian to possess a domiciliary right in more than one Province in the Union

Again, the Section means that any person whose parents were at the time of his birth lawfully resident and such residence was restricted to temporary or conditional residence by any law then in force, will be declared a prohibited immigrant. To state plainly, this section seeks to inflict punishment on the innocent children for the sins of their fathers, that is to say, under Act 17 of 1895, a goodly number of Indians came under terms of conditional residence who with their descendants now form the majority of Natal born Indians numbering probably about 75,000 fairly educated, are likely to be declared prohibited immigrants, because at the time of their birth their parents were said to be subjected to conditional residence. It is however necessary to draw public attention to a controversy that took place in 1914 on the very points and the probable and possible interpretation of the law that is under consideration, between the "African Chronicle" and Mr Gandhi when the latter effected a settlement of the Indian question including the status of the Indians and their descendants who came under Act 17 of 1895. The interpretation of the Indian Relief Act came into great prominence by the following editorial appearing in the "African Chronicle" which was supported by the "Natal Mercury" and the "Natal Advertiser", the two leading European Newspapers and eventually the controversy ended by a declaration from General Smuts that the Indians and their descendants who were affected by the Bill would be restored to the position held by those who came as free men in terms of the recommendations of the Solomon commission. The recommendation of the Solomon Commission is as follows —

"Personally we (commissioners) think the best course would be simply to repeal Section 6 of Act 17 of 1895 so as to leave the Indians, who fall under the provisions of that Act in the same position as those who were indentured under Indian Immigration Act 25 of 1891."

We reproduce below the editorial comment of the "African Chronicle" relative to the controversy on this question and further correspondence thereon between Mr Gandhi and General Smuts.

On the 20th June 1924 the "African Chronicle" commented on the Relief Bill as follows —

"The speech delivered by General Smuts in the House of

Assembly on the Second Reading of the Indian Relief Bill discloses an important step in the development of the Indian question and we should not hesitate to characterise his speech as a diplomatic utterance of the first rank. This Bill when read in conjunction with Smuts' speech throws a flood of light over the whole question.

The underlying motives of the Indian struggle of which Mr Gandhi is the official exponent, have been to secure guarantee for preserving the vested rights and also to restore to the ex-indentured Indian his right to sell his labour according to his free will and enjoy the fruits of that labour unmolested. In regard to the first point, General Smuts, in his speech distinctly avows, that "that this question had been raised in debate during the passage of the Immigrants Regulation Bill and it was not found possible to guarantee old rights."

This unmistakable declaration on the part of the responsible Minister coupled with the fact that the "policy of the Union Government being as far as possible to limit the Indian population in South Africa by an offer of inducement for them to return to India" ought to set thinking minds among Indians reflect whether this Indian Relief Bill would really afford any relief at all to ex-indentured Indians. Thousands of Indians labour under the impression that with the repeal of the £3 Tax, they become free and that they will be at liberty to do what they please. We are afraid that the present Bill will not admit of so liberal interpretation as some of our friends are disposed to put on this Bill. Those Indians who came to this country under Act 17 of 1895, have entered into a covenant, the essence of which is as follows — "And we further agree that after the expiration or other determination of this contract we shall either return to India or remain in Natal under indenture to be from time to time entered into, provided that each term of new indentured service shall be for two years. Section 6, "Every indentured Indian who shall have entered into the covenant set out in Section 1, of this Act and who shall fail or neglect or refuse to return to India or to become re-indentured in Natal, shall take out year by year a pass or licence to remain in the Colony."

It is, indeed, obvious that in the present Relief Bill only the

latter portion of the covenant viz — Section 6, is repealed, while the first two conditions attached to the covenant will be binding on these Indians. In other words, though the £3 tax is repealed, these Indians must make a choice between the first two conditions, that is to say, either they must re-indenture or repatriate themselves to India. We have good reasons for believing that a very large number of Indians would certainly not hail with delight these conditions to which they have strenuously objected, and, in fact the agitation has been directed as much against indenture system as it was against £3 tax. In fine, while the present Bill, absolves the Indian of his £3 tax burden, it tightens the screw in another direction, that is, in the direction of indentureship, failing which he should leave the country courteously, but though no penalty is imposed on him for non compliance with the provisions of Act 17 of 1895

In the event of any ex-indentured Indian refusing to abide by the terms of his amended contract it would appear that the Union Immigrants Regulation Act comes in to fill up the gap made in Acts referring to Indians and it would provide the penalty. According to Chapter 11 Section 4 (1) (a) it is provided that "any person or class of persons deemed by the Minister on economic grounds or on account of standard or habits of life unsuited to the requirements of the Union or any particular Province thereof are prohibited immigrants."

In pursuance of the authority vested in the Minister, any Indian, who refuses to comply with the requirements of Act 17 of 1895 viz, to remain under indenture for an indefinite period is liable to be declared a prohibited immigrant and deported accordingly.

Moreover, the definition of, "Domicile" is specified in unmistakable language, viz —

"A person shall not be deemed to have a domicile within the Union of any Province for the purpose of this Act unless he has resided therein for at least three years, otherwise than under terms of conditional or temporary residence permitted by this Act or any other law"

Seeing that without Indian labour, several Natal Industries would be ruined, this vast army of 74 000 Indians are suffered to remain in this country as serfs, without the ghost of a chance

for them to acquire a domicile, however long they might serve under indenture

The introduction of this over generous Relief Bill by our pro Imperialist Union Ministers excited the jealousy of a good many Natal members who sounded a note of warning lest Natal might become a second Mauritius, but we may venture to point out to them that they have been unduly sensitive about the matter, since Section 8 (1) of the Immigrants Regulation Act provides thus —

“No prohibited Immigrant shall be entitled to obtain a licence to carry on any trade or calling in the Union or (as the case maybe) in any Province wherein his residence is unlawful or to acquire therein any interest in land whether leasehold or freehold or any other immovable property (2) any such licence obtained by a prohibited immigrant or any contract deed or other document by which any such interest is acquired in contravention of this Section shall as from the date that the holder of the license or interest is dealt with as a prohibited immigrant under this Act, be null and void”

The foregoing Sections from the Immigrants Regulation Act, when read in conjunction with the Indian Relief Bill, ought to suffice to convince our readers how difficult it will be for an ex-indentured Indian to escape with impunity the requirements of the Law, even though he had inclination to evade indentureship *ad libitum*, and hence it leads us to the inevitable conclusion that the effect of this Relief Bill instead of causing contentment and peace among the Indians will create profound ill feeling, discontent and disappointment, if not another strike among the Indian workers, as soon as they realise that their true condition is worse than it ever was before”

The “Natal Mercury” in a lengthy editorial supported in emphatic language the attitude of the “African Chronicle” in reference to the Relief Bill and remarked that “This is not exactly the ‘Relief’ which the strikers against the £3 Tax may have reckoned on. From this point of view they now realise that the granting of their demand will place them in a worse position than they previously occupied”

The “Natal Advertiser” in its editorial columns dealing ex

haustively with the point raised and in support of the 'Chronicle' comments caustically remarked the conduct of General Smuts — "This may be extremely astute and slim in the way of statecraft, it is hardly the statesmanship which aims at a genuine settlement of the South African Indian problem by a sincere and exhaustive enquiry into grievances, and a determined effort to rectify them"

Apparently Mr Gandhi and Sir Benjamin Robertson, who was then representing the Government of India in this country, were unaware of the underlying object of the Indian Relief Bill and as soon as the exposé by the "African Chronicle" supported by the two most influential European Daily Papers in Natal engrossed the attention of the public, Mr Gandhi discovered the flaw in the Bill and immediately made an effort to get into correspondence with the Minister in order to rectify it. The following is the full text of the correspondence that took place between Mr Gandhi and General Smuts —

21st June, 1914

Dear Mr Gorges,—The enclosed speaks for itself. I do not understand the Mercury reading of the measure. But, as the principle involved is so great, I would value an assurance that the meaning given to the Bill by the Mercury is not the meaning Government attached to the Bill.

(Signed) M K GANDHI

Department of the Interior,  
Cape Town 22nd June, 1914

Dear Mr Gandhi,—I was able to see the Minister this morning and discussed with him the question which apparently is now agitating a certain section of the Indian community in Durban and which formed the subject of the telegram from Mr Randeree to you (returned herewith). General Smuts desired me to say that it is quite clear from the report of the Commission that it was never intended that, by the repeal of the provisions of the existing laws dealing with the £3 licence, the position of the ex-indentured immigrant would be prejudicially affected in some other way, and had there been the slightest doubt on the subject, he is sure that the Commission consisting as it did of three eminent lawyers would certainly have drawn attention to it.

The Minister himself is quite satisfied that the effect of the Bill as it now stands would not be to bring into evidence the position which the "Mercury" and the African Chronicle" would have us believe will be created

(Signed) E M GORGES.

The publication of the foregoing correspondence did not satisfy the Indian public, and so the "African Chronicle" kept up the agitation for exacting better terms so as to enable the ex-indentured Indians to enjoy the freedom for which they fought and for the sake of that freedom they stood by their leader. Naturally uneasy in mind as to the insecure position of the ex-indentured Indians, Mr Gandhi interviewed the Minister and suggested that some method should be devised for safeguarding the rights of ex-indentured people. Thereupon the following letter was addressed to Mr Gandhi by the Minister —

Cape Town

June 30th 1914

Dear Mr Gandhi,—Adverting to the discussion you have had with Gen Smuts on the subject of the position of the Indian community in the Union, at the first of which you expressed yourself as satisfied with the provisions of the Indian Relief Bill and accepted it as a definite settlement of the points which required legislative action at issue between that community and the Government, and at the second of which you submitted for the consideration of the Government a list of other matters requiring administrative action over and above those specifically dealt with in that Bill, I am directed by Mr Smuts to state with reference to these matters that,



## SECTION 17 PROVISIO 11

This means that any woman claiming to be the wife of an Indian lawfully domiciled here, cannot enter the Union after 1930—(if she had never previously been in the Union)—and, even if she lived here all her life, she could not after visiting India, return at any time after ten years of her first entry

After 1930 no Indian woman who had not previously been in the Union can enter it—in other words, no Indian will be permitted to go to India to find a wife after 1930 and bring her to his home in South Africa

## SECTION 3 2) INDIAN RELIEF ACT

- (a) "If such union exists between him and any other woman who resides in any Province or
- (b) if such exempted person has in any Province offspring by any other woman who is still living "

Provided that no woman shall be deemed to be the wife of such exempted person—

- (1) if such union exists between him and any other woman who has under any law relating to immigration or to Asiatic registration been recognised within the Union as the wife of such person and has resided or resides or is domiciled in any Province, or
- (ii) if such exempted person is has offspring resident or domiciled in any Province by any woman who is still living and a union shall not, for the purpose of this section, be deemed to have ceased to exist by reason only of the fact that according to the tenets of an Indian religion it has been dissolved

Prior to the passing of the Indians Relief Act, the union between a Mahomedan man and woman was not recognised as a legal marriage—This Act legalised such unions provided they were registered, the effect of the provisions therefore is to do away with the rights of Mahomedans to introduce more than one wife, and if a Mahomedan sought to divorce a wife other than by legal process whose marriage was registered in the Union, he would not be permitted to introduce another wife hereafter

It follows that if a Mahomedan had a wife with children in the Union and the wife subsequently left for India and was there divorced, so long as any of her children resided in the Union the man would not be permitted to introduce another wife nor could he claim the right to enter the Union, on the ground that is his lawful wife

The definition of "the child" under the age of sixteen is the same as that in the Indian Relief Act except that after the word "recognised" line 51 and after the word "Registered" line 53 are inserted the words 'at the time of the birth of the child

Assuming an Indian had a wife in India with a child and at the same time a wife in Natal and the wife in India died and he desired to bring his child (under 16) from India to Natal—the child would be restricted because 'at the time of his birth' the union between his father and mother though legal in India would not have been recognised here, even though the man's wife in Natal were also dead

#### SECTION 18

In order the better to understand this let us quote Section 10 of the Principal Act (22 of 1913)

10 "No prohibited immigrant shall be exempt from the provisions of this Act, or be allowed to remain in the Union or in any Province wherein his residence is unlawful, or be deemed to have acquired a domicile therein, by reason only that he had not been informed that he could not enter or remain in the Union or (as the case may be) in that Province or that he had been allowed to enter or remain in through oversight, misrepresentation, or owing to the fact having been undiscovered that he was such a prohibited Immigrant '

The suggested addendum speaks for itself and requires no comment

#### SECTION 19

Section 22 of the principal Act provides that "Any person—not being a person born in any part of South Africa—who whether before or after the commencement of this Act has been sentenced to imprisonment for the contravention of certain specified laws, may be removed from the Union as an undesirable inhabitant

It means that, whereas, under the existing Law any Indian convicted of and sentenced to imprisonment for contravening any of the specified laws might be deported under the proposed amendment, such deportation could not be decreed in a case where the accused was given the option of fine, and imprisonment in default of payment

## SECTION 20

For the purposes of comparison we give the definition of domicile as set forth in Section 20 of the Principal Act

30 ' Domicile, shall mean the place in which a person has his present home or in which he resides or to which he returns as his place of present permanent abode and not for a mere special or temporary purpose and a person shall not be deemed to have a domicile within the Union or any Province (as the case may be) for the purposes of this Act unless he has resided therein for at least 3 years, other wise than under terms of conditional or temporary residence permitted by this Act or any other law or as a person under detention in a prison, gaol, reformatory or lunatic asylum, and a person shall be deemed for the purposes of this Act to have lost his domicile within the Union or any Province (as the case may be) if he voluntarily go and reside outside the Union or that Province (as the case may be ' )

Under the existing law an Indian proceeding to India who could show that his visit there (although extending over three years) was only temporary had the right to claim the right of re entry into the Union, but, under the proposed Section, mere absence for over three years, unless under permit of Minister, cancels all previous domiciliary rights

Everything is at the will of the Minister—say in case of a boy of ten who desired to go to India to study the Minister could refuse to grant him a permit to remain away for more than 3 years, nor is even the Minister empowered to give a permit for longer than ten years

Of course this can be overcome by a return to the Union and the immediate application for a further certificate of identity and passage back to India—but at what a cost!

SECTION 21 Section 6 of the Indian Relief Act provides for the Minister having power to grant free passage to India to those Indians desiring to abandon all domiciliary rights

The addition of the words "or elsewhere" are merely intended to apply to those cases where Indians desire to go elsewhere than to India in respect of which the Minister has not power at present, to grant passages, the suggested words will bestow authority

One can only infer from the preceding section that, in the event of the Indian Government declining to receive the would-be deportees from South Africa, the present Bill provides for free passage to places other than India, especially in the case of Colonial-born Indians who might be declared prohibited Immigrants, it would appear the above provision has been made to meet such cases.

On the whole, we venture to summarise the purport of the provisions of the Immigration Chapter as follows —

Chapter 11 deals with the domiciled and floating Indian population, who would be harassed and in actuality persecuted in many ways. Although at the time when Act of 1913 was passed, the Government undertook to improve the lot of the resident Indian population as a compensation for the "closed door" policy towards the race from which they originated, the present Bill, pays no regard for any such promises, which have gone by the board. Not only it is gone by the board, but the present Bill, by implication undertakes an enactment having for its object elimination of the resident Indian population. Several sections of the old Act have been amended in order to fit in with the new policy. The old Act was bad enough in all conscience but the present one is the worst piece of callous hearted legislation.

Section 14 of Chapter 11 raises the deposit fee from £15 to £100 against an alleged prohibited Immigrant, and renders an appeal to the Judiciary so costly as to be practically prohibitive for the average Indian to seek justice.

Section 16, provides for the registration of all Indians in two districts in the Northern parts of Natal, who have been transferred to the jurisdiction of the Transvaal against their will — a Province which has become notorious for its retrogressive legislation and rabid anti-Asiatic proclivities, and one cannot say, seeing the slovenly worded nature of the Bill whether the Asiatic Registration Act of the Transvaal would not be made applicable to Natal.

Section 17, deprives the Colonial-born-Indians of their right of entry into the Cape Province which they have all along enjoyed, and, the right of an Indian, by virtue of his birth, is not at all guaranteed and also in violation of the terms of Act.

tlement made between Mr Gandhi and the Government, it declares a large section of the Indian Immigrants and their descendants who came under indenture in and since 1895, prohibited immigrants and as such are liable to be deported. In other words, under the authority of this section about 50,000 Indians of whom a good many were born here, are liable to be put on board ship, and their properties are liable to be confiscated and this is a distinct breach of the settlement arrived at in 1914.

Section 15-17 renders the status and rights of the wife and children of an Indian married in accordance with the tenets of any Indian religion so dubious as practically to say "an Indian's wife is not his lawful wife and his children illegitimate" apparently the object of the Government being very subtle and far reaching.

Section 18 gives autocratic powers to Immigration Officers or Appeal Boards to cancel registration or domicile certificates already granted to Indian entrants. In other words, any Indian is liable to be challenged to prove his right to stay in this country, which no Indian however highly placed he may be, could prove, since the Act of 1913, has declared the whole of the Asiatic race in the world prohibited immigrants on account of their "standard of living and economic habits of life".

Therefore, it is manifest that this autocratic power has been given to the Immigration Officers with a view to expedite the process of elimination much more quickly than any other sections of the law could.

Section 20, gives the definition of domicile which seems to our mind a queer and redundant performance, in view of the fact no protection is afforded under any other sections to a resident Indian and the term domicile becomes a meaningless expression when it is liable to become null and void if an absentee is away from this country for more than three years.

Quite contrary to the laws and morality governing the conduct of international or inter-racial relations, the Union Legislature seeks to give a novel definition to "domicile" which confers no right on a person by virtue of his birth or acc in this country during the statutory period, by im

posing on him a penalty clause attendant with forfeiture of his rights. That is to say, the law in effect says

“Although the Indian lived in this country for the Statutory period of three years, he did not live, a fictitious creation of the legislative brain—and therefore he is not entitled to any rights in this country !”

# CONCLUSION

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## CHAPTER IV

In conclusion, we venture to ask the thinking people of the Empire to consider the effect of this legislation not only on those of the Indians who are affected by it but also on the prestige and stability of the Empire at large. There are times when Nations like individuals obsessed by passion or by their own sense of self importance, not visualising the consequences of their action, have committed themselves to certain line of conduct repugnant to the laws of God and for which they have paid dearly! On the present occasion the Hertzog Government is committing the Union Legislature to acts, which supersede all known laws governing the conduct of man in civilised Society. It is, indeed, high time that responsible statesmen and leaders of public opinion wake up to the importance of the issue and see that justice is done to those who are committed to their care. The mere fact of South Africa reaching Dominion status implies grave duties and responsibilities on every Elector in this country, and under the circumstances, one has to remind the Statesmen at the head of affairs of their sense of duty and, their sense of honour to those who are voiceless and defenceless people, however weighty and urgent may be the exigencies of party politics in this country. If there was a race who have suffered severely by the pangs of trials and tribulations, it is *the South African Dutch, unfortunately in their hour of triumph of right over might, they have altogether forgotten the lessons of History in their treatment of the so organized races*

In a word, it is scarcely necessary to emphasise that this Bill having all the ingredients of oppressive legislation unknown in the annals of modern times, is fraught with grave consequences to all concerned, and indeed Christian Ministers and a Legislature that swears by the Christian Bible, ought to feel a sense of repugnance and humiliation to sponsor a Bill of this kind. Therefore, the writer ventures to appeal to responsible leaders

of public opinion in this country and other parts of the Empire to take the necessary steps to safeguard the rights of Indian settlers and see that justice is done to the Indian community for a progressive state of existence

However, our community in South Africa is keenly sensible of the growing tension and the gravity of the situation created by the anti Asiatic agitation which has found expression through the present Bill and indeed strenuous efforts are being made to demonstrate the bitter feeling aroused on both sides by the proposed Bill. Having raised a tremendous issue, the community cannot help but facing it courageously and indeed they will abide by the consequences whatever may be the issue from this, perhaps their last and final struggle, for their existence in this land as a self respecting community. Of course our countrymen naturally look for guidance from and moral sympathy of all fair minded citizens in their struggle for freedom

It may not be out of place if we say a few words with reference to the effect of this Bill on other non European races in the Union and on the whole continent of Asia, quite apart from the immediate effect of it on the domiciled Indians. The average whiteman in this country has little or no knowledge of the outside world. The whiteman's daily routine of life and his habits and his way of thinking being too narrow have all contributed to cripple him both morally and intellectually and therefore keen observers of contemporary events have to express their despair as to the future of this country. It is difficult to say what the causes are for a radical change in the mental and moral outlook of the white man in Africa. It is difficult to say whether climatic conditions of the country or whether the corroding influence resultant from coming into contact with races different in colour and composition or whether the system of Government which panders to the vulgar prejudices of human nature, or whether to the control by an electorate, narrow in outlook, but seethed in selfishness greed and race bigotry, or whether it is due to economic causes, which secure to the white race, without a keen and persistent struggle for existence, a standard of ease and comfort, which they would otherwise not have if conditions were different, as it is the case in old countries. Anyhow, the fact is that there are signs of distinct



deterioration in the moral and intellectual fibre of the white race in the same manner as it was in Europe and Asia where the nobility and aristocracy fast deteriorated in intellectual and moral spheres of activity owing to their privileged position in the country without calling for the exercise of all the latent faculties in a free and unrestrained manner which now finds expression in Laws intended to keep his competitor, of a different nationality and colour, down either by force or fraud !

The Ministers unblushingly tell the world that they have to have recourse to that line of conduct, out of sheer self preservation. It is not our intention to discuss here whether the policy of the Government be right or wrong but we are safe in asserting that their policy is based on force and expediency and therefore if force, not reason and justice, is to be the deciding factor in National affairs, then we beg to take the liberty to remind General Hertzog that there is little hope for a peaceful progress on the lines indicated by that policy for a great length of time

Indeed as a result of this unnatural system of Government, this country in all its checkered career has not produced a solitary figure of outstanding historic merit either in art, science, nay in any branch of human knowledge, for the contribution or advancement of European civilization

Like the proverbial miser who "lives an indolent life on the hoarded fortunes of his thrifty ancestors", so, in effect, the white race in South Africa, while gloating over the glory and grandeur of European civilization, is simply living a life of physical comfort and luxury, without making any exertion either mentally or morally for advancing that civilization in this continent to a higher stage in the evolution of mankind. In other words, the spontaneous growth of the European civilization has been arrested by the inaction or rather evilaaction of the coteries of that civilization, that means, positive sign of decay. Nature says thus "Progress or Perish," This is a phenomena which all keen observers of contemporary events and social science would have noted and, therefore, many express their despair as to the progressive development of European civilization in this country !

However, in so far as Africa is concerned, the white man

cannot impede the progress of the native along right channels and it is only a matter of time for the native question to reach the crucial point when nature will restore the equilibrium of all the political forces in this country on a sound civilized basis

In Asia, movements of far reaching importance are taking place, actually challenging the dominance of the whiteman. Japan is silently holding a watching brief over the world movements. This Island Power of the East would not reconcile herself to the subordinate position assigned to her Nationals in territories peopled by the European race. The real storm centre is at present in China where the Chinese National movement has thrown the gauntlet at the European Nations. If further proofs be needed to demonstrate the awakening of Asia, the very interesting contribution of an eminent German Professor of Economics LEADEFFE of the Heidelberg University who has recently returned after travelling about three years studying the problems of Asia affords ample evidence of the far reaching movements taking place there. He says —

While the people of Europe are still discussing in what manner the methods of future warfare are to be regulated, political changes of the most far reaching character are taking place with over whelming rapidity in the far East. Twenty years ago, it could still be said that nothing could happen in the world without Europe without the European Powers. England was unquestionably Mistress of the seas and even the United States could not rival her. No political decision of any importance could be made in the world without the consent of the European Powers. It was possible then to speak of the world domination of Europe or at least of the white race.

"All this however, has now come to an end. In the first place we must recall the partition of Sea Power which resulted from the Conference at Washington. This Conference so largely widened the spheres of influence of the American fleet, that British Politician rightly saw in it an end of the maritime monopoly hitherto enjoyed by England. The influence of European politics on the Pacific Ocean which

ple of the setting sun, those who see now setting their sun, their glory, after having exulted in its zenith. Yes, if any one should feel himself humiliated, it is not the son of the coloured races but the son of the race which is still white only in its skin, and which has been only half converted by its ordeal, only half purified by its inferno.

"This race calls itself Christian, it adores a son of Asia, and yet if that son of Asia, if the Christ were now to come again upon the earth, he would be excluded from America, not being enough of a gentleman to possess the needed number of dollars, he would be excluded from Australia, he the son of a working man and an Asiatic, if he could not pass an examination in a foreign tongue. And in the Colonies of South Africa he could not even sit in the trams side by side with the Christian European. That is how Christians would treat the Christ and they call that civilisation—a civilization of barbarians.

"For the true barbarism for peoples and races consist precisely in this want of mutual respect, in this reciprocal lack of understanding, in this proud and ignorant stupidity. Nothing is so stupid as pride—and nothing is so proud as ignorance. Your East was barbarous in the times when it despised the West. Our West is barbarous to-day when it despises the East. Europe cannot call herself civilized so long as she has not learnt no more to humiliate her Mother—Asia."

Such being the opinion entertained by eminent thinkers like Paul Richard on "European civilisation" and such being the reactionary activities that are taking place challenging the supremacy of the white race, would it not be politic to study the world movements, and adjust the political forces of this country in a manner that it would not come into conflict with the present day current of public opinion? The Union of South Africa cannot afford to shut her eyes to world movements any more than the Asiatic can afford to live in sublime contemplation of the glory of his Aryan ancestors in Vedic period, and neither would the people of this country be wise to remain in isolation as if they were the bee-hive of the Universe! The world is marching onward. There was a time when, in order to satisfy the insatiable hunger of the Jingo Imperialists and Capitalist Gold Hunters, the world was plunged into more than one ghastly

war and what have been the results? The world has been progressing all the same but the Capitalists instead of gaining have lost their prestige and probably their money too! But now it seems to be the turn of the organised white labour to set the world again in unrest! If past experience be a safe criterion for the guidance of the future, then it is certain that this Labour-Nationalist movement founded on political fanaticism and having for its object the exploitation of the minority and the straggling of worker races will crush itself down by the very weight of its own iniquity and inhuman tendency!

Therefore, having the experience of historic kingdoms and ruling nations before us, we should respectfully enquire of General Hertzog whether the line of action taken by his government would promote the advancement of the country? We venture to say that it has not so far done, and it is not likely to do so hereafter, however long he may persevere in it.

We should respectfully venture to ask the Cabinet Ministers whether it would not be to the advantage of the country and the white race in particular to modify their outlook towards the Asiatics and other non-European races and treat them as human beings and give them a chance to progress? The present Bill is going to involve the country in a cataclysm unparalleled in the history of man and it is going to arouse or rather hasten the awakening of the non-European races, and, certainly the Asiatic World would be brought to their sense of duty to their own nationals and to be sure they are not going to take all the kicking from this Union lying down. The present policy based on oppression and terminating in extermination is not going to work out and the Ministers will eventually find themselves in considerable difficulties, notwithstanding the terrible weapons they are sharpening.

In conclusion, we venture to think that it is befitting the present occasion and the subject under discussion to give due prominence to a remarkable utterance of Lord Selbourne on the effect of the action of oppressors on the oppressed and especially at the present juncture Gen Hertzog and Dr Malan would, we hope weigh the following words and digest them before proceeding further with this unhappy legislation. This is what Lord Selbourne said —

“Injustice and oppression, as with a red hot iron, scar the cha-

racter of the people who oppress and of the people who are oppressed There is an indelible brand on the character of the oppressor and oppressed In the case of the oppressor, the effect is always and altogether evil The oppressor passes from brutality to brutality, loses more and more the consciousness of his responsibility to God and sympathy for his fellow-man

Men reap what they sow,

The mills of God grind slowly,

But they grind exceeding small

and red retribution one day meets the nation of the oppressor Nor does the oppressed go unscathed In his weakness, he takes refuge in falsehood, treasuring revenge But also noble characteristics are drawn out and stamped on him, he becomes united under the social and political pressure with which he meets He becomes pertinacious to a degree which elevates pertinacity to a public virtue and he becomes capable of infinite self sacrifice for his own people and his own kith and kin "

# INDIAN CASE BEFORE THE ASIATIC COMMISSION.

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## PART II

In terms of a commission consisting of Sir J H Lange, Lieut Col Wyhe, K C, Mr J H Hume, and Mr Duncan Baxter, appointed on the 3rd day of February 1920 by the Governor General to enquire into and report on the provisions of the law affecting

- (a) the acquisition of land and rights affecting land in the Union by Asiatics and persons of Asiatic descent for trading and other purposes
- (b) the trading or carrying on of business by such persons generally, or in specified localities

a representative deputation authorised by the Central Districts Indian Community waited on the commission, and Mr P Subramania Aiyar, Editor of the "AFRICAN CHRONICLE," acting on behalf of the deputation, presented the subjoined statement of the Indian Case before the Commission —

It will not be in the public interest to alter the law in any respect in regard to the acquisition of land and rights affecting land in Natal by British Indians and their descendants for reasons stated below —

For a period extending over half a century, Natal has received a large number of Indian Immigrants who were induced, in order to develop the country and to benefit the white settler, to colonise and settle in the Province, on the strength of a proclamation issued in 1843 by Her Majesty's Government, to the effect that 'there shall not be in the eye of the law any distinction or disqualification whatever founded upon mere distinction of colour, origin, language or creed, but that the protection of the law in letter and in substance shall be extended impartially to all alike'

At the time when the introduction of Indian labour was decided upon the country seems to have been at a standstill. The Durban Corporation in an address presented to the then Governor, depicted the condition of the country in the following language —

“Independently of measures for developing the labour of our own Natives, we believe your Excellency will find occasion to sanction the introduction of a limited number of coolies or other labourers from the East in aid of the new enterprises on the coast lands, to the success of which sufficient and reliable labour is absolutely essential for, the fact cannot be too strongly borne in mind that on the success or failure of these rising enterprises depend the advancement of the Colony or its certain and rapid decline. Experimental cultivation has abundantly demonstrated that the issue depends solely on a constant supply of labour.”

The above address clearly manifests the deplorable condition to which the country was reduced for want of a steady labour supply. It is also equally evident that the European settlers of Natal were face to face with impending ruin of their industries if no reliable labour supply was forthcoming, and therefore, after mature consideration the Natal Government decided to invite Indian Immigrants from India under Law No. 14 of 1859, the first immigrants landing on November 1860. It continued until 1866 and then totally ceased.

Seeing that the infant industries of the Colony were going to ruin, immigration from India recommenced in 1874, and the following are the terms. “Originally the terms of contract remained for three years, but subsequently it was altered to five years. At the end of five years’ indentured service they (Indians) may shape their lives as they list. They may return to India at their own expense. They can engage in agricultural or commercial pursuits, in short they may move about with the same freedom as other sections of the community.”

“At the expiration of 10 years residence in the Colony, they were entitled to a free passage back to India, should the immigrant choose to do so.”

In addition to providing medical facilities, their educational

wants were supplied by a special system under control by Government and inaugurated entirely in the interests of the descendants of Indian immigrants, which cost the Government annually £1500 "

Indeed, the Europeans seeing the indispensable nature of the Indians and their descendants in the development of this country, persuaded them to remain in the Colony, and the eagerness of this desire is manifested in the fact that under Section 51, Law 2, of 1870 it was enacted that

"When any Coolie Immigrant shall be desirous to commute his right to a free passage for the value in land to the amount of the cost of such passage, and the Lieutenant Governor shall see fit to grant such immigrant out of the Crown lands of the Colony a piece or parcel of land equal in value at the upset price of the Crown Land to the amount of the cost of such return passage, such immigrant shall have the same in lieu of his right to a full passage "

Under the authority of the above quoted section of the Law, fifteen acre blocks of land had been given to the Indians, and even now, the early settlers and their descendants are in full enjoyment of their rights

It is evident, that the advent of Indians in Natal is not due to their own initiative, but owing to repeated solicitations on the part of Europeans that they came to settle in South Africa, but then, even in those days, owing to objections raised at the large influx of Indians, more than once Indian immigration was suspended. An experiment was made to utilise available Native labour the result being that the scheme failed, crops were actually rotting on the ground and no sustained labour could be had at any price. Seeing the impending ruin of various industries, there was a great clamour for Indian labour again, and immigration again resumed in 1874. This continued until 1884, when again an outcry was raised against Indian immigration, and in order to investigate the matter, a commission was appointed to consider the advisability of discontinuing the system. But the commission, after an exhaustive enquiry extending over two years, recorded their opinion as follows —

"Free Indians thrive in Natal, their industrious habits cause them to prosper in nearly every occupation in which they



engage. They show commendable industry in fishing and fish curing the Indian Fishing settlement on Salisbury Island in Durban Bay has been of manifest advantage, not only to the Indian but to the white inhabitants of the Colony."

"They do remarkably well as cultivators in the coast districts of small parcels of land rented on short leases. In such agricultural pursuits, they have competed with their former masters, and the quantity of maize grown by them has been no unimportant factor in lowering for some years the market price of that cereal. In numerous localities in the upland as well as in the coast districts they have converted waste and unproductive land into well kept gardens planted with vegetable, tobacco, maize and fruit trees. Those settled in the vicinity of Durban and Pietermaritzburg have succeeded in winning for themselves almost entirely the supplying of the local market with vegetables.

"In fairness to the free Indian we must observe that the competition is legitimate in its nature and it certainly has been welcomed by the general community.

There can be no doubt that Natal is admirably suited whether as a temporary or a permanent home to Indian immigrants.

taneously, down went revenue and wages. Immigration was checked, and retrenchment and reduction of salaries was the main thing thought of, and yet another change came some years later in 1873. A fresh promise of renewed Indian Immigration created its effect, and up again went the revenue, wages and salaries, and retrenchment was soon spoken of as a thing of the past. Records like these ought to tell their own tale, and silence childish race sentimentalists and mean jealousies."

The late Sir Henry Bunns, giving evidence before the above Commission, observed as follows as to the utility of the Indian population —

"In my own opinion, the free Indian population is a most useful section of the community. A large proportion of them considerably larger than is generally supposed, are in service in the Colony, particularly employed as house-servants in the town and villages. They are also considerable producers, and from information, which I have taken some trouble to gather I conclude that the free Indians have grown about one hundred thousand muids of maize per annum for the last two or three years, besides considerable quantities of tobacco and other articles. Before there was a free Indian population, the towns of Pietermaritzburg and Durban had no supply of fruit, vegetables and fish, at present all these things are fully supplied. We have never had any immigrants from Europe who have shown any inclination to become market gardeners and fishermen, and I am of opinion that, but for the free Indian population, the markets of Pietermaritzburg and Durban would be as badly supplied now as they were ten years ago. Were cooler immigration to be permanently stopped in a very short time, after such stoppage there would cease to be as much employment for Europeans as there is now. Tropical cultivation never has been and never will be carried on without Indian labourers.

Sir J. L. Hallet giving evidence before the above Commission said as follows —

"I consider that the free Indians, at present in the Colony are an immense benefit, being largely engaged in agricultural pursuits. I do not think that the competition of the free Indian has interfered in the slightest degree with the development of the country by European settlers."

As years rolled on, despite the acknowledged merit of the Indian as worker and agriculturist as well as pioneer in the development of this country, attempts were, time after time, made to lower the status of the Indian, as well as to restrict his rights in more than one direction. Although, Indian labour saved Natal from financial embarrassment and brought prosperity to Europeans, yet the latter, again raised an outcry to put a stop to Indian immigration. In 1907, a Commission was appointed, and after making a thorough enquiry, the Commission recorded their opinion as follows —

‘ That absolute and conclusive evidence has been put before the Commission that several industries owe their existence and present condition entirely to indentured Indian labour. That the expansion of industries made possible by the presence of Indians have provided the Native with further openings

The existence of these industries has been, is still, and in the future will be increasingly beneficial to a very large number of the people in the Colony and to the Colony as a whole, and that their exhaustion or restriction by whatever cause brought about would be serious and irreparable to the individual and general interests

‘ Further, the employment of Indian labour has provided opportunities for whites which would not otherwise have existed

“The Indians are industrious, law abiding, and on the whole, sober in their habits, and it has been proved that their presence has no injurious effect on the morals of the whites or Natives ”

Although Parliamentary Commissions and responsible leaders of public opinion have expressed the utility of the Indian to the country, yet the accumulating disabilities and grievances of the Indian settlers provoked considerable discussion between the Indian and Natal Governments, consequently, Lord Minto, on behalf of His Majesty's Government announced in the Viceroy's Council in 1911, that further immigration of indentured Indians to Natal would be prohibited, the reason for so doing was said to be that, “Owing to the position created by the divergency of Indian and Colonial standpoints, and also owing to the absence of a guarantee that Indians will be accepted as permanent citizens after the expiration of their indenture ”

This repudiation on the part of the Government of India was natural and inevitable, because the Natal Government, time after time, acted in a manner savouring of breach of faith in their treatment of the Indian settlers. Seeing that strong but sustained efforts were being made by the European Colonists to reduce the status of the British Indian settlers here, Lord Rippon in one of his despatches to the Government of Natal, strongly maintained that "It was the desire of Her Majesty's Government that the Queen's Indian subjects shall be treated on a footing of equality with all Her Majesty's other subjects."

As there was no improvement in the treatment of the Indians, Lord Minto put a stop to the Indian Immigration once and forever.

It is indeed obvious that the presence of a large number of Indians in this province is due to the indenture system inaugurated at a time when the Colony was on the verge of ruin, and it is equally manifest that the present prosperous condition of Natal is due to a great extent, to the pioneer work done by Indians and their descendants.

It may be said that the European also has equally done pioneer work in the development of the country, by virtue of the capital he has invested in the country, we admit it, but then it should be remembered that "as capital is that portion of wealth utilised to produce more wealth, and as all wealth is due in the first place to the application of labour to the land (or its products) labour takes precedence of capital in importance."

However, a reference to the statistical year book will prove that, prior to the advent of the Indian, little was done in agricultural, commercial, and industrial development of the country. As a result of Indian immigration, agricultural industry gained a strong footing, and numerous other industries have been established and commerce thrived to the extent it has. It is, indeed, evident that the present high state of production of the country's latent resources and the high standard of life, resulting from high wages adopted by Europeans, is due to the unremitting toil of the Indian for the development of the coun-

revenue in the shape of rent from the Indian tenant, the European public living in towns and cities enjoy the facilities for getting their vegetables and fruit at reasonable prices. In addition to that, Borough Markets, acting as clearing houses, derive considerable revenue from this concern.

As an illustration, we beg to state that it has been estimated that at the Indian Market established by the Durban Corporation, a daily sale of about £1,000 worth of vegetables, fruit, greens, and other Colonial produce takes place. It must be evident that any alteration in the laws in regard to the acquisition of land by Indians would be calculated to have a disastrous effect on the progress of this Province as a whole, and particularly the Indian community.

Respecting the Indian traders, as British subjects, relying upon the proclamation issued by Her Majesty's Government in 1843, chose Natal as the field of their commercial pursuits. The introduction of Indian immigration, attracted the attention of the trader to the commercial possibilities of this Province, and even during those early days, Europeans evinced irritable disposition towards the traders. A petition dated the 15th July, 1885, was presented by the Pietermaritzburg Chamber of Commerce to the Legislative Council praying that the Council will pass a measure to the effect that,

"Indians, Arabs, or Asiatics shall not be allowed to live or trade in any part of towns excepting in such quarter as may be set apart by the Corporation or local authorities for that purpose.

"That no Indian, Arab, or Asiatic shall trade out of the locations set apart in the towns or townships, that is, that no peddling or hawking shall be allowed in the Colony excepting upon payment of a licence of £10 per annum."

The petition referred to above was presented in 1885, when there were about 40 Indian traders, while the white population numbered about 35,000 souls, and the Legislative Council, after referring it to the Indian Immigrants Commission, apparently had taken no further notice, but the Commission, after due enquiry placed on record their opinion which is as follows :—

"We are of opinion that these Arab traders have been drawn to Natal by the presence therein of those Indians who have been introduced under the Immigration Laws. Rice is the chief food of the 30,000 Indian immigrants now in the Colony, and these astute traders have so successfully devoted their tact and energy to the supply of that article that the price to all consumers fell from 21/ per bag in former years to 14/ in 1884

We are content to place on record our strong opinion, based on much observation, that the presence of these traders has been beneficial to the whole Colony, and that it would be unwise, if not unjust to legislate to their prejudice "

Observing that the presence of the Indian trader who came with capital, was as indispensable as the presence of the Indian labourer in the development of the country, both the legislature and responsible leaders of public opinion, not only discountenanced outcries, but in reality encouraged the Indian trader to push the commerce in several parts of the country. By so doing, industries expanded and commerce thrived. Moreover, it will be obvious that progress of time has demonstrated beyond a doubt to the contrary, the contentions of the Maritzburg Chamber of Commerce, the effect of Asiatic trading on the whole, that is, when one gives a calm and dispassionate consideration to the question at this distance of time, one has to arrive at the conclusion that, instead of the white traders diminishing either in number or in wealth, they have increased, according to the census report it is said that 11.05 per cent of the European population are engaged in commerce, while during the same period less than 3 % of the Indian population have come under the category of commercial pursuits. It is, indeed, self evident that, instead, of a period of retrogression setting in, as predicted by the then anti Asiatic party, according to the natural law of things, there has been an all round-progress permeating the country. The activities of the Indian trader, instead of proving detrimental to European interests, as it has been alleged so often, proved a legitimate and indispensable medium for European capitalists embarking on larger schemes of commercial expansion, that is to say, the Indian trader proved a distributing medium among consumers

It will be observed that higher wages now drawn by Europeans is due to extra wealth created since the introduction of Indian immigration from India, and though Indian workers have been the means of bringing about the present state of high efficiency in production, consequently greater wealth and profit to Europeans, and though the former had not been recompensed commensurate with the wealth which they had been instrumental in producing, yet, time after time, complaints have been made regarding the competition of Indians in all trades and occupations

We venture to submit that the word "competition" is a misnomer, used as a catch phrase by many not realising the meaning it denotes. Competition in the real sense of the term, could only exist between persons placed on an equal footing. Here, in the case of the Indian, it is too well known to need repetition here, that as there has been no equality as between the European and Indian, either in social, political or economic spheres of activity, so there has never been any competition between the Indian and the European. The truth of the matter is, that each race—that is to say, Indians and Europeans, have been accommodating and serving the requirements of the circle or class according to their purchasing capacity, it will be admitted that the purchasing power or capacity of the non-white races, is not equal to the white races since their earnings are not similar, and, therefore, it follows that it is inevitable for the former to trade with those who are best suited to their earning powers and economic habits. It is, indeed, transparent that there has been no competition as between the Indian and the European either in trade or any other occupation. A reference to the schedule attached hereto regarding the average income of the non-white and the whites, will prove our contention.

Average wages paid to White and Coloured persons in Factories and Industrial Centres in 1917 in Natal

Province	White	Native	Asiatic	other Colour
Durban	£206	£29	£31	£30

Average wages paid per Employee of each race in each class of Factory —

Class of Industry	White	Native	Asiatic	other Coloured
Raw Material	£108	£34	£33	£31
Stone Clay	186	21	24	36
Wood	151	33	34	47
Metals, Engineering	237	38	45	39
Food, Drink	160	29	23	38
Clothing & Textiles	100	39	52	60
Boots, & Printing	173	39	54	57
Vehicles	154	39	66	54
Shipbuilding	233	41	68	93
Furniture	101	36	46	68
Chemicals	292	32	28	42
Jewellery	141	33	65	98
Heat, Light & Power	257	37	33	79
Leather & Leatherwork	92	51	53	48
Building & Contracting	158	29	23	61
Other Industries	152	40	34	62

The economic Commission in their report published in 1914 observed as follows —

"The Indian population of the Union located for the most part in Natal, may be divided into those brought there under indenture and those who followed them on their initiative and at their own expense. Of the latter, in the main a trading class, many opened stores at first for the supply of Indian and Native requirements, few have been drawn into industrial pursuits. It is chiefly the ex-indentured Indians who are noticable in manufacture. The indentured Indian of the early days, when his term of service expired often took up land and grew vegetables, meales and tobacco. To a certain extent he re-indentured or took service with Europeans, but of late years he has increasingly entered the semi skilled and skilled trades. To-day he is to be engaged in the building trades, printing, boot repairing, tailoring, painting, mattress-making and other miscellaneous callings of the semi-skilled trades. Many so engaged are Natal born Indians, and of Natal born Indians, numbers who speak English, are employed as cooks waiters, drivers, vanmen, and in lawyers offices as junior clerks and



touts The Natrl born Indian is a problem in himself, he is often fairly educated and in many cases owe their education to the self-sacrifice of the lowly indentured parents His education does not, however, link on to manual labour as a rule and he looks to less strenuous and more highly paid callings Here he finds the way largely blocked, and naturally becomes dissatisfied The majority who follow field work, either as re-indentured or free Indians, or who work in the coal mines brickfields, and so forth, do not receive much more than able bodied natives In other callings, their earnings are much below those of whites

"In the skilled trades, the efficiency of Indians is distinctly beneath that of white men, and there is no doubt as to the extent to which they undertake work for white people, so far as they labour for their own objection to their advancement is not even plausible That they perform tasks of a not very expert kind in painting, carpentering, bricklaying, and so forth, to the direct order of white consumers is beyond dispute, but it would be impossible to determine the extent of the work in question, and how far the skilled white man is affected by it Much of the work is evidently that of the handyman rather than of the expert artisan Again there was conflict of testimony as to the amount of skilled work performed by Indians indirectly for white consumers Skilled Indians work for shops kept by Indians, but the degree of recourse to these shops by whites, it is hopeless to attempt to measure It was alleged further that work such as the making up of clothes was put out by white shopkeepers to Indian skilled workers, but certain Indian witnesses examined by your Commissioners declared that the bulk at any rate, of the work was done for Indian shops to the best of their knowledge

"Again the extent of the trade done among other than Indian manufacturers employing Indians only, is unknown, but it seems likely that in cheap tinware, especially for Natives, it is relatively considerable It may be avowed that skilled Indians either bring their knowledge from India or pick it up through being employed for rough work where skilled whites pursue their avocations Your Commissioners failed to discover evidence proving that skilled labour has suffered seriously from the competition of Indians

"Your Commissioners desire to call attention to certain Municipal action with reference to Indians, including those born in Natal, the aim of which is to protect white employment. Some years ago Indians began to show enterprise in small shop keeping and simple manufacturing on an insignificant scale, and recently, in consequence, new licenses to trade or manufacture for sale have been generally, if not invariably, refused to Asiatics in Natal, though old licenses have been renewed. In the Cape also, similar action, though possibly not stringent action has been taken, your Commissioners are convinced that the drastic course adopted in Natal was harsh and imprudent. Indians have been left under the impression that they are to be definitely debarred in the future from shoring in the licensed trades merely on the ground of their nationality. How much unrest and anxiety has been occasioned by the unnatural system of importing Asiatics on contract is too obvious to need more than a bare statement.

"Reviewing the whole situation as regards the competition of white and non white in the skilled and semi skilled calling, your Commissioners conclude as follows —

The competition is greatest with the Cape Coloured, and next the magnitude with the Indians. None of the evidence proved that the sphere of white labour was being absolutely restricted in the Union, and the wages of the whites had fallen. It is a plausible view that some of the so called encroachments of the non whites should properly be regarded as a filling of the gaps left by the attraction of the whites to superior situations, which superior situations could not have existed in the absence of competent people to fill the lower positions. Several witnesses affirmed that there was a dearth of capable white labour, and that a good man soon found a better opening for his talents. The complaints of grinding competition can be understood since any body who experiences competition feels it, even if his rivals are losing ground. But here and there white labour may have been displaced, and a constant fear of displacement is prevalent, which is comprehensible, particularly as the non-white workman usually gets a lower wage. The low wage of the non-white combined with the fact that he daily drops his supply price when

is apt to

cause a substitution of non-white for white labour when business is depressed, finally your Commissioners conclude, that in initiative resource, and powers of control, the white races unquestionably stand pre-eminent. It is important that the rising generation of the whites should fit themselves to fill supervisory and highly skilled positions, so that such competition as may be felt in the future may force them upwards rather than downwards. The state and local authorities can assist movement in the right direction by providing educational facilities with reference to industrial needs. Success cannot be achieved by the white man in South Africa by keeping the Coloured man down but by raising himself up".

It is indeed manifest that the bogey of Asiatic competition is more illusory than real, and it is apparent that the whole affair is an artificial agitation, bolstered up by some persons for objects unknown.

In order to prove that the general European public evince very little intelligent interest in the agitation, the report of a paragraph appearing in the "Natal Mercury" dated the 21st April, 1920 is reproduced below —

#### "THE ASIATIC COMMISSION"

"Lieut. Col. Wylie, who presided at a meeting in support of Mr. Green's candidature for the Toll Gate Division, in the Natal Provincial Council, made a reference to the Asiatic Commission, which is at present sitting in the Transvaal, and which will commence its sittings in the Law Courts, Durban, on Monday April 26th.

Colonel Wylie, who is a member of the Commission, intimated that he had been disappointed at the number of witnesses who had come forward and hoped that as Natal was deeply interested in the Asiatic question, witnesses would lose no time in coming forward to give evidence on a question which was more than a burning one in the Natal Province, as well as in the whole of South Africa."

However, if it is held that competition is taking place between the Indian and the European community, then we contend that it is legitimate and that it is in the largest interest of the community, since the major portion of the community is benefitted

by the competition. It may, therefore, be safely asserted that the Indian trader as well as other sections of the Indian population are of manifest advantage to the community as a whole.

We respectfully venture to submit that it is a fallacy to state that there is any such thing as a stereotyped "standard of life or standard of living" for a race or nation. The truth of the matter is, that the standard of living of an individual or nation depends upon the individual idiosyncrasy and the aggregate earning capacity of the community. However, if it was held that there is an acknowledged "standard of life," then we maintain that since the Indian is not paid the standard rate of wages paid to Europeans, and in view of the economic and political disabilities and racial bar which separate the Indian from the white man, it is practically impossible for the former to adopt the standard of life of the latter, but as to the standard of living of the Indians, we append hereto schedules showing the kind and quantity of foodstuffs used by the average Indian and the average trader per month. As the major portion of the Indian community consists of men of limited means, they are compelled by sheer force of circumstances to live up to their means. The average earning of the preponderant majority of free Indians, does not exceed an annual income of about £180, and however desirous one may be to adopt the standard of life of the European, even on the assumption that the standard of life of Europeans is the best possible in this world, it is inconceivable for an Indian to attempt to do so in face of the present economic and political order of the country, which affords little opportunity for the expansion of his energy and talents.

But in connection with the standard of living of the Indian, we venture to state for the information of the Commission that according to the social customs and habits of the Indian community, each family is enjoined to incur a certain amount of extra expenditure for religious, charitable and other ceremonial expenses. However humble in circumstances an Indian family may be, in accordance with the tenets of the Hindu and Mahomedan religions, the head of the household is in solemn duty bound to offer food to visitors and raiment when occasion  
 , no matter whether they are friends or strangers

Moreover, during religious, matrimonial and obsequies occasions which often happen, the average Indian family, whether they be Hindus or Mahomedans is obliged to incur more expenditure than the average European family does. Therefore, having regard to the earning power of the Indian, it will be self-evident that the expenses of the average Indian family will stand comparison with the expenses of the average European family whose earning power is infinitely greater than the former, but the nature of expenses in detail may differ in many respects owing to characteristic difference in national affinity.

We beg to submit that, however reluctant the community was to surrender a valuable right, which they had all along enjoyed, yet the faith that the community placed in the assurance of Mr Gokhale who enjoyed a great and unique position as a Statesman in the Councils of the Imperial and Indian Governments persuaded them to accept the Immigration Act, under the belief that "the lot of the South African Indians will be steadily improved" We, therefore, venture to urge that the Commission having in view the above said promise, apparently resulting from negotiations with the Union Government, will give their due consideration to the Indian question from the light thrown on it as reflected by Mr Gokhale's speech We venture to submit that the Indians as devoted loyal subjects of the British Empire, have endeavoured to help this country to the best of their power during the greatest crisis in the history of the world—during the great war Replying to an address presented at the Durban Town Hall last year, General Smuts, the present Prime Minister, in an elaborate speech, after observing that "the British were profoundly grateful for the effort India had made in the war, and that gratitude was not merely academic, but that it would be reflected in the attitude of conciliation and benevolence of the British people towards the people of India in greater political freedom than they had enjoyed before," concluded as follows —

"I thank you for the beautiful address with which you have presented me, and for the sentiments expressed therein I am glad to note that in the address you have made mention of the fact of your countrymen having served under my command in this Great War As I have said on previous occasions, I have been proud of the privilege of having had under me in East Africa, so large a number of your countrymen Some of them came from the independent Native States of India, Imperial Service Contingents, and others who did great and glorious work in this War I had written from East Africa to the Princes of India of the splendid part they played by their troops, and that there were few better than they Your countrymen fought not only in East Africa, but took part in other theatres of war The conquering of the Turkish Empire was, in the main, the work of the Indian army The burden of the work in Mesopotamia, Turkistan, and the Indian Frontier fell almost entirely

the whole matter India would be represented by members on the Commission to watch over the interests of Indians so that no stigma might attach to them Some of you think I look down upon Indians, but that is not so I look up to them They come from a very old civilization—much older than ours They are able to hold their own We have our difficulties in South Africa, and we, as a small white community, cannot withstand a great influx of Indians We would be crushed and overwhelmed if we had an open door India, if she is in need of immigration for her surplus population, has the fertile fields of Mesopotamia, Euphrates Tigris, and Turkistan, which can hold 30,000 000 of people But, that now the Indians are here, I hold they should have fair treatment in all parts of the Union We have to live side by side in conciliation, and we must endeavour to understand each other's standpoint, so that we may live together and grow together We are members of the one family and belong to the same Empire I thank you again for the beautiful address and silver casket in which to put the address Mrs Smuts will be glad to hear of the kindly reference made to her I thank you all once more "

On the whole, the Indian community which consists of about 150,000 Indians, is a permanently settled population, Natal is their home, and their earning is spent in this country, and they and their children pursue their respective occupations, struggling hard, in face of natural and artificial difficulties, to earn a bare livelihood Therefore, in view of the services rendered by the Indian community for the development of Natal in many directions, as well as for reasons narrated above, the community ventures to submit that the present system of acquisition of landed property, which has operated all along to the greatest benefit of the community as a whole, be retained unaltered We beg to submit that the Indian community has been labouring under certain difficulties in the matter of trading licences By virtue of enormous powers entrusted with the Licensing Officer, it entails hardship in some cases, mis carriage of justice takes place in many instances

In order to obviate the difficulty, the Indian community ventures to suggest that the Licensing Act be so amended as to enable applicants to appeal to the Supreme Court in all cases and

the grounds of the refusal of a licence, must be expressly mentioned in the Act and not left to the discretion of the licensing authorities.



## Supplementary Statement

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We respectfully venture to submit the undermentioned statement of facts and arguments in reply to the averments made and arguments adduced by Mr Blackwell and other witnesses who appeared before the Commission to substantiate the charges against the Indian community resident in the Union.

Mr Blackwell, in his review of the evidence, took advantage of the opportunity to pass some very disparaging remarks about the Indian Nation, and stigmatised them as a race on a par with the aboriginal tribes of Africa, and he sought to prove his contention by quoting as a precedent the treatment meted out to the Indians during the Republican Regime of the Transvaal and Free State, and finally Mr Blackwell asserted that a final settlement of the Indian question had been effected in 1914, when Mr M K Gandhi entered into a compact with Gen Smuts, and he declared that the Indian community had committed breach of faith in not abiding by that compact.

We venture to state in reply thereto, that the Indian community now resident in the Union, are inheritors of a very ancient and historic civilization, and therefore it must be obvious that to stigmatise a race such as the Indians and to declare that they are fit to be placed on an equal footing with the aboriginal tribes of Africa, is not only unfair, but it is calculated to offer gratuitous insult to three hundred millions of the people of India, and in all probability such thoughtless declaration on the part of the Counsel for the South African's League might cause serious friction between other Sovereign States of Asia and this country. Mr Blackwell, in his zeal to make out a case for the South African League, betrayed either ignorance of the Indian psychology or blatantly told an untruth before the Commission. However, Prof Max Muller, one of the most eminent authorities on Ethnology, testifies as follows to the people of India. In his classic book on "What India can teach us" Prof Max Muller says —

"If I were to look over the world to find out the country most richly endowed with all the wealth, power, and beauty that

However, it must be added, that time after time, the British Government protested against the treatment of the Indian Community during the Republican Regime, and when War broke out between England and the Transvaal Republic, and when the latter told that there was no justification for the War, Lord Landsdowne speaking on behalf of the British Government made a declaration to the effect that "the misdeeds perpetrated by the Boer Government as well as their treatment of the Indians, especially under the Law of 1885 was one of the greatest justification for the War " The British Government, after having made such a weighty and deliberate pronouncement on the policy of the Republican Regime, we venture to assert, it would be inconsistent, nay—it would lower the prestige of the Government to follow the identical policy again which has cost the British and Boer Governments immense wealth and many valuable lives

Respecting the 1914 settlement, we venture to state at the outset that, that settlement had been the subject of acute controversy amongst the Indian Community all over the Union due to divergence of opinion, consequently, many members of the Indian Community have declined to accept that settlement as a settlement, and have expressed their sentiments, through the press and platform as will be shown hereafter, by quotations from the South African press The Government was perfectly aware of the sharp division of opinion and the controversy that was raging over the Smuts-Gandhi settlement However, the Select Committee of the House of Assembly that was appointed to enquire into the disabilities of British Indians in the Transvaal states that "in the year 1914, following on a protracted Passive Resistance movement on the part of the Indian Community, certain negotiations with regard

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nature can bestow—in some parts, a very paradise on earth—I should point to India. If I were asked under what sky the human mind has most fully developed some of its choicest gifts, has most deeply pondered on the greatest problems of life, and has found solutions of some of them, which well deserve the attention even of those who have studied Plato and Kant, I should point to India. If I were to ask myself from what literature, we, here in Europe—we, who have been nurtured almost exclusively on the thoughts of the Greeks and Romans and of one semitic race, the Jewish—may draw the corrective which is most wanted in order to make our inner life more perfect, more comprehensive, more universal, in fact, more truly human, a life, not for this life only, but a transfigured and eternal life again, I should point to India. Whatever spheres of the human mind you may select for your special study, whether it be language or religion or mythology or philosophy whether it be laws or customs, primitive art or primitive sciences, everywhere we have to go to India. Whether you like it or not, because some of the valuable and most instructive materials in the history of Man are treasured up in India and India only.”

Professor Heeren says —

“India is the source from which not only the rest of Asia, but the whole Western World derive their knowledge and their religion.”

We beg to submit that the treatment meted out to the Indian community during the Republican Regime, is no justification for continuing the same policy in these days, because the Union of South Africa, in common with the rest of the world, has been undergoing radical changes in all spheres of activity. Liberty and progress are the order of the day, and the present tendency of the world movement is obviously not towards the level of the Republican policy of the Voortrekkers, but towards a higher and a more spiritual level—in other words, as Gen Smuts very truly put it, “that we fight on, not in a dull desperate spirit for low material ends, but in a conscious, joyous co-operation with the spiritual forces of progress towards a better future for man.”

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"In view of these circumstances, we came to the conclusion that we were justified in extending the scope of our enquiry, so as to include an investigation into the subject of the administration of the immigration and licensing laws

"We feel bound, however, in view of the terms of reference to limit our investigation to the five points specified above, and to eliminate from our enquiry, such questions as the following, which we were invited by various witnesses to consider —

- (a) "That the Transvaal laws prohibiting Asiatics from becoming the owners of fixed property and from acquiring rights under the Gold Law should be repealed,
- (b) that it should be illegal for the Government to insert in grants and leases of land in townships in the Transvaal a clause, prohibiting the transfer or sub-letting of the land to Asiatics
- (c) Such general questions as the alleged want of proper educational facilities for the children of Asiatics, their inability to carry fire-arms, to ride in trams in the Transvaal, etc.

None of these matters in our opinion had any effect in bringing about this strike, and most of them could only be dealt with by legislation, and not by administrative action, so that we do not consider that they fall within the scope of our enquiry

That being so, we now proceed to discuss the five subjects set forth by Mr Gandhi in his final letter of the 21st January, 1914 "

It is, indeed, obvious that the causes that led to the Passive Resistance Strike and the subsequent settlement of that phase of the Indian question, had had nothing to do with the larger issue of Indian grievances, viz — the question of trading and other rights of Indians, and therefore, by no stretch of the imagination could it be construed as a final settlement, since the Solomon Commission has admitted that "it was precluded from taking evidence on the larger issues of Indian grievances" We take this opportunity to state below the conflict of opinion prevailing at the time of the Smuts-Gandhi settlement, both among European and Indian Press

The "FRIEND," Bloemfontein, in an editorial said —

"If South Africa were an Independent State, it is as certain

as anything human can be, that the British Government which is responsible for the government of over 300 million Indians, would not have allowed South Africa to settle the question as it has now been settled. Even if the British Government did not intervene and it is almost unthinkable in such circumstances they would not, some other, great power would be only too eager to take advantage of such an excuse as our treatment of the Indians to force a war upon us for the purposes of annexation and colonization. It is just as well for us to be under no misconception in considering a problem like this."

The "NATAL MERCURY" in an editorial styled "Mr Gandhi's Message," commented as follows —

Mr Gandhi made a considered statement of the Indian position before his departure from Cape Town from the point of view of a mind which has been closely and directly engaged with the intricacies of the Asiatic problem in this country for the best part of a decade.

"We are led to suppose in the light of this fresh statement of the position on Mr Gandhi's part, that our own original conjectures as to the doubtful character of the settlement were not wholly unfounded."

Under the heading of the "Cloze of the Farce," the NATAL ADVERTISER, commented as follows —

"The farewell letter from Mr Gandhi to his countrymen in South Africa is perfectly in accordance with the colossal impudence of his whole attitude. This letter says finally and definitely that Bill (Indian Relief Act) is not a final settlement of South African Indian Problem. He declares flatly and openly that there are still many points of difference between South Africa's Indians and Europeans and it is also satisfactory to think that several South African papers, ourselves included, have also refused to take part in this gigantic farce."

Over the heading of "Is it a Final Settlement" an Indian Journal, AFRICAN CHRONICLE, in its issue of 11th July 1914 reflecten the Indian public opinion as follows —

"In his letter to Mr Gandhi, the Minister of the Interior desires to be understood that

"The placing of the Indian Relief Bill on the Statute Book

will constitute a complete and final settlement of the "controversy" We are afraid that the gallant General will be entirely disappointed in his anticipations in that direction. Indeed, General Smuts knows and the whole Union knows that the Indian community has materially gained nothing, except a few bits of administrative concessions which are more or less of a liquid nature. Instead of improving in status, the community's legal position is not as secure as it should be or as it has been.

The legislature has attained a grip over the Indian community by lowering them in status and reducing them to a sort of tenants-at-will system, while the Executive by offering administrative concessions through the renowned members of the Indian community, endeavour to cajole the community to acquiesce in this arrangement. It is well-known that all responsible Indians and intelligent sections of the people, who have made their homes in this country, have been opposed to this procedure, and on more than one occasion, different sections have brought to the notice of the authorities their disapproval of this hole and corner method of settling a controversy, which has become historic now. On the whole, we strongly protest against the assumption that the placing of the "Indians Relief Act" on the Statute Book closes the chapter of the final settlement of the Indian question, and in fact, the community rightly and truly believes that the passing of the Indians Relief Act is just the beginning of the first chapter towards a settlement and whatever may be the final outcome of the struggle in which the Indians are now engaged, neither the people of India nor the Indian residents in the Union can accept this arrangement between Mr. Gandhi and the Minister as any settlement at all. The whole of this so-called settlement presents the ugly look of a farce."

It will be evident from the foregoing expressions of opinion as reflected through the public Press, that the 1914 settlement had in no way affected the larger issue of Indian grievances.

However, placing implicit faith in the Union Parliament as the common custodian of the rights and interests of all sections of the population, the Indian community presented last year a Petition praying for relief from a "general campaign having for its object the ousting of Indian trade in the Transvaal," instead of granting relief, when the Select Committee made



its recommendations to Parliament, we, much to our regret, realised the extent of animus existing amongst Members of Parliament towards the Indian community. Perhaps it may be considered that the word animus is a very strong expression, but we beg to submit, that it has been advisedly used as the occasion warrants the use of such an expression. In order to prove the race hatred prevailing among some of the Members of the Assembly towards the Indian community, we quote below part of a speech delivered by Mr W J O'Brien, M L A, a report of which appeared in the "Times of Natal," dated the 26th February, 1920.

Turning to the Asiatic question Mr O'Brien said "that a Bill had been passed by Parliament dealing with Asiatics on the Witwatersrand. Upon his (Mr O'Brien's) suggestion, it was decided that this be extended to embrace the whole of South Africa, and a commission had just been appointed to go into the whole question. We cannot have two such races as the Asiatic and the African together in this country. The Commission was composed of men whom we could trust, such men as Sir Johannes Lange, Col Wylie, Mr Baxter and Mr. Hofmeyer."

We beg to submit that as the Select Committee of the House, from the very beginning indicated a biased attitude towards the Indian Traders, and as their recommendations have been based on wrong premises, by the inclusion of Mr. Gandhi's personal letter of the 7, July 1914 as part of the settlement document, the Union Parliament which is the fountain head of justice, has not had a fair opportunity to give an impartial and full consideration to the claims of the Indian community.

We maintain in the last paragraph that the Select Committee of the House of Assembly based their recommendations on wrong premises, and the following reasons should prove our contention.

(1) The settlement effected between Mr Gandhi, as representing the Passive Resistance Strikers and the Government, in 1914, was for specific subjects referred to in his letter of the 21st January, 1914, and therefore it is not necessarily an agreement between the Indian community and the Government.

(2) That since the Solomon Commission was "precluded from taking evidence on the larger issue of Indian grievances" viz - Trading rights, etc of Indians, the Select Committee, we hold, was not justified in finding a pretext in 1914 settlement to arrive at the conclusions referred to in their recommendations

(3) Letter from Mr Gandhi to the Secretary for the Interior dated the 7th July, 1914, is a personal letter, written without the cognizance of the community, and as such, the community is not responsible and neither is it binding on the community, and therefore, we hold that the recommendations of the Select Committee of the House of Assembly was based on wrong notions, and on wrong premises altogether

However, Mr Gandhi himself, in a letter contributed to the "Times of India," Bombay, referring to the 1914 settlement has cleared the position as follows —

"In this correspondence, there is not a word about the Indian Settlers not getting Trade Licenses, or holding fixed property in the Mining or any other area. And the Indians had a perfect right to apply for and get as many Trade Licences, as they could secure, and as much fixed property as they could hold whether through forming registered companies or through mortgages. After a strenuous fight for eight years, it was not likely that I would give away any legal rights, and if I did, the community I had the honour to represent, would naturally and quite properly have dismissed me as an unworthy, if not, a traitorous representative

"But there is a third letter, totally irrelevant considered as part of the agreement which has been used for the curtailment of trade rights. It is my letter of 7th July addressed to Mr Gorges. The whole tone of it shows that, it is a purely personal letter setting forth only my individual views about "vested rights" in connection with the Gold Law, and Township's Amendment Act. I have therein stated definitely, that I do not wish to restrict the future action of my countrymen and I have simply recorded the definition of vested rights. I discussed with Sir Benjamin Robertson on the 4th March, 1921, saying that by vested rights I understand the right of an Indian and his successors to live and trade in Townships in which he was living, no matter how often he shifts his residence or business

from place to place in the same township. This is the definition on which the whole of the theory of evasion of the law and breach of faith has been based. Apart from the question of irrelevance of the letter, I claim that it could not be used even if it could be admitted as part of the agreement in the manner it has been. As I have already stated on previous occasions, there was a prospect of an adverse interpretation of the Gold Law as to Trade Licenses, and there was the tangible difficulty in getting land or leases of buildings, and it was by the most strenuous efforts that Indians were able within Gold Areas to retain their foothold. I was anxious to protect the existing Traders and their Successors, even though the legal interpretation of the Law might be adverse to the Indian Claim. The vested right, therefore, referred to in my letter of the 7th July, was a right created in spite of the Law, and it was this right that had to be protected in the administration of the then existing Laws. Even if, therefore, my said letter can be incorporated in the agreement by no canon of interpretation that I know of, can it be said to prevent the Indians morally (for this is the meaning of the charge of breach of faith) from getting new Trade Licenses by virtue of the Law of the land. Indians openly and in a fair fight gained in their favour, a legal decision to the effect that they could obtain Trade Licenses against tender of the Licence Fee even within the Gold Area. To this, they were perfectly morally entitled. There cannot be any question of legal breach. Their trade rivals, would long ago have made short work of any legal breach. Lastly, supposing that the Law was adverse to the Indian Claim, my definition could not be pleaded to har any agitation for amendment of the Law, for the whole of the settlement, in the nature of it, was of a temporary character, and the Indians, as definitely stated in my letter of the 30th June "could not be expected to rest content until full civic rights had been conceded." The whole of the plea, therefore, of breach of faith is, I venture to submit, an utterly dishonest and shameless piece of tactics, which ought not to be allowed to interfere with a proper adjustment of the question."

Therefore, for reasons set forth above, we venture to submit that the Union Parliament, has done great injustice to the Indian Community by passing an Act in the last session of Parliament to "Make further provision with reference to the

"These findings should be supplemented by pointing out, that the difference in the results obtained by the various classes of Trader, is due to the differing conditions under which, they obtain and supply the goods they deal in, and not to any difference in their business method

"The Commission also finds that wholesale merchants during the War period, have certainly increased their control over retail trade and that this is not in the interests of the country. If retailers can look to becoming independant, the calling will attract capable people, but if (as is widely the case in South Africa) retail trade holds out nothing but the prospect of life-long dependence upon some supporting-house, unless a gambling venture should remove the incubus of debt, the Union of South Africa will obtain an unsatisfactory class of retail trader and the community will suffer. The whole position can be summarised by saying that a point has been reached where the interests of wholesale Merchants have commenced to diverge from those of the general community, which is inadequately protected by competition and that some form of Government control has therefore become necessary "

It has been urged by some of the witnesses that the Indian is not a scientific farmer, and that there is competition even in production as between the Indian and European. We beg to state that, if the Indian be not a scientific farmer, then it is not his fault, since the Government has so far paid no attention to disseminate scientific education among the Indian farming community, while large sums of money is spent for imparting scientific education among European farmers. In regard to competition in production, we maintain that it is a healthy sign of progress should competition exist, but we submit, that there could hardly be any competition in production since both the Indian and European farmers employ unskilled black labour for equal pay and dispose of their produce for equal market-value. It is, indeed, self-evident that, there could possibly be no competition in production, but should it exist, it is better for the country on the whole

It has been urged by some of the witnesses that the presence of the Indian amongst the European population tends to a deterioration in the value of the properties of Europeans, but

we maintain that, the theory is not only opposed to rudimentary principles of political economy, but also past experience in Natal, especially in Durban and rural areas has demonstrated beyond a doubt that, the wider the field, the greater is the demand, and higher is the value of properties. Enhancement or depreciation in value of properties depends, not on the personal of the occupant or owner, but on facilities afforded by money or other causes to the largest number of people.

It has been contended that other self-governing dominions have prohibited immigration of Asiatics, but it must be remembered, that the former have seen the wisdom of treating the resident Asiatic population on an equal footing with other citizens of their dominions, while the Union have shown no such tendency to treat the domiciled Indians even as self-respecting civilised human beings, .... though the Minister promised to do so when he met the Indian representatives at the Imperial Conference in 1917.

We, therefore, submit that it is for the Union Government to fulfil their part of the compact, which has been entered into at the Imperial Conference "for Indians being treated as human beings" while the Government of India and the South African Indians have already fulfilled their part of the agreement, in that, both have consented for restricted immigration subject to the Union Government complying with their terms of the compact.

Moreover, it should be remembered that, by the present policy, the persons who are most benefitted, are the majority of the consuming public and landlords who let their premises to tenants to carry on their business. It is admitted on all sides, with the exception of profiteers, that by the Indian trade, the consumers are benefitted. The Licensing Officer for the Province of Natal, in his evidence stated that, 80-85% of the stores wherein business is conducted by Indians, pay rent to landlords. In other words, the Indian pays part of his income, presumably, to the European landlord, who might in the absence of the former, not utilise his property for productive purposes to the extent to which it is put to use by the present arrangement. It is a well known maxim, that no State will make a novel departure from a wholesome policy in the governance of a country and give effect to it by legislation unless such legislation is for the greatest good of the greatest number of subjects. But here, in the case of segregation policy, it must be considered whether it would be productive of the greatest good to the greatest number of the community?"

We hold that it will not, since segregation policy will inflict loss and hardship on the consuming population as well as the landlords. It is, indeed self evident that, segregation policy will only benefit the few at the expense of the many. We strongly hold to the belief that, having regard to the dire consequences experienced by great Empires arising out of trade jealousy, it would be a wrong policy for the State to endeavour to adjust any differences that might exist in matters relating to trade between one class of the subjects and the other. We maintain that so long as human nature being what it is, there is bound to be conflict of interests between races, classes and even individuals due to a keen struggle for existence, and so in a purely domestic concern such as this, should the State intervene and legislate to the prejudice of a part of the population, simply because one section happen to possess a little more business acumen than the other, then we hold it would create an unhealthy precedent, and eventually it might prove difficult to see the finality of it.